

PUBLIC HEARING  
COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.  
DATE: May 25, 2000  
PLACE: State Capitol, Room 126  
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported by: STACEY L. HEFFERNAN, CSR, RPR  
No. 10750

VINE, MCKINNON & HALL (916) 371-3376

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair  
Representative for B. TIMOTHY GAGE, Director  
State Department of Finance

PHILIP ANGELIDES, State Treasurer  
State of California (Item No. 1 only)

ALBERT P. "AL" BELTRAMI  
Public Member

D. MICHAEL FOULKES  
Representative for KATHLEEN CONNELL  
Deputy Controller, Legislation

JOHN S. LAZAR  
Acting Director of Office Planning and Research

MILLICENT GOMES  
Representative for Loretta Lynch, Director  
State Office of Planning and Research

STEVEN A. NISSEN  
City Council Member, City of Turlock

WILLIAM SHERWOOD  
Representative for PHILIP ANGELIDES  
State Treasurer's Office

JOANN STEINMEIER  
School Board Member  
Arcadia Unified School District

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAT HART JORGENSEN, Chief Legal Counsel

DAVID SCRIBNER, Staff Counsel

PUBLIC TESTIMONY

JOSEPH MULLENDER, ESQ.  
and  
ANTHONY MURRAY, ESQ.  
Representing Long Beach Unified School District

KATHRYN RADTKEY-GAITHER, Program Budget Manager  
Department of Finance

PUBLIC TESTIMONY

DANIEL STONE, Deputy Attorney General  
State of California, Department of Justice  
Office of the Attorney General  
Representing the Department of Finance

OWEN WATERS, Spokesperson  
Representing Riverside County Superintendent of Schools  
and Supplemental Claimant

DIANA SMITH McDONOUGH, Shareholder  
Lozano Smith, Attorneys at Law  
Representing Supplemental Claimants

JACK B. CLARKE, JR., ESQ.  
Best, Best & Krieger, LLP  
Representing Riverside County Superintendent of Schools

JIM CUNNINGHAM  
Representing San Diego Unified School District

KEITH B. PETERSEN, Special Counsel  
SixTen and Associates  
Mandate Reimbursement Services and  
Education Mandated Cost Network

CAROL A. BERG, Ph.D., Executive Vice President  
School Services of California  
Education Mandated Cost Network

PAIGE VORHIES, Bureau Chief  
State Controller's Office

JEFF YEE, Section Manager, Local Reimbursements  
Division on Accounting and Reporting  
State Controller's Office

LYNN PODESTO  
Department of Finance

DAN TROY, Finance Budget Analyst  
Department of Finance

JEFF BELL  
Department of Finance

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1           BE IT REMEMBERED that on Thursday, the 25th day of  
2 May, 200 commencing at the hour of 9:30 a.m., thereof, at the  
3 California State Capitol, Room 126, Sacramento, California,  
4 before me, Stacey L. Heffernan, a Certified Shorthand  
5 Reporter in and for the State of California, the following  
6 proceedings were had:

7                               ---oOo---

8           CHAIRPERSON PORINI: All right. We'll go ahead and  
9 begin the May 25th meeting of the Commission on State  
10 Mandates.

11           May I have role call.

12           MS. HIGASHI: Mr. Angelides?

13           MR. ANGELIDES: Present.

14           MS. HIGASHI: Mr. Beltrami?

15           MR. BELTRAMI: Here.

16           MS. HIGASHI: Mr. Foulkes?

17           MR. FOULKES: Here.

18           MS. HIGASHI: Mr. Lazar?

19           MR. LAZAR: Here.

20           MS. HIGASHI: Mr. Nissen?

21           MR. NISSEN: Present.

22           MS. HIGASHI: Ms. Steinmeier?

23           MS. STEINMEIER: Here.

24           MS. HIGASHI: And Ms. Porini?

25           CHAIRPERSON PORINI: Here.

26           MS. HIGASHI: The first order of business is  
27 Item 1. It's Special Education Parameters and Guidelines,  
28 and this item will be presented by David Scribner, staff

1 counsel.

2 MR. SCRIBNER: We're all here. Good morning.

3 "The purpose of this informational hearing  
4 is to hear the Special Education Parameters  
5 and Guidelines. On September 15, 1999,  
6 the Commission heard substantial testimony  
7 on the issue of whether and to what extent  
8 offsets are applicable to the Special Education  
9 Test Claim. At the September hearing, the  
10 Commission continued this item in order to  
11 obtain the legislative history of the evolution  
12 of federal and state special education law,  
13 the legislative intent behind the enactment  
14 of Statutes of 1980, Chapter 797, and a more  
15 detailed explanation of the Department of  
16 Finance's proportional offset approach.

17 "At the October 28, 1999 hearing, the  
18 Commission voted to postpone adoption  
19 of the Special Education Parameters and  
20 Guidelines until the December 1, 1999 hearing.  
21 It was the Commission's intent that during  
22 this postponement the parties would enter  
23 into negotiations regarding the settlement  
24 of the Special Education Test Claim.

25 "At the December 1, 1999 hearing, the  
26 Commission continued its hearing of the  
27 proposed Special Education Parameters  
28 and Guidelines to allow the parties to

1 negotiate a settlement. Specifically,  
2 all parties agreed to place the Special  
3 Education Parameters and Guidelines on  
4 inactive status for renewable six-month  
5 periods. Additionally, the parties agreed  
6 to provide quarterly updates to the Commission  
7 regarding the negotiations progress.

8 "On March 15, 2000, the claimants  
9 submitted a request with the Commission  
10 to 'reserve a place on the Commission's  
11 March 30, 2000 hearing agenda' to orally  
12 present the first 'quarterly' update.

13 At the March 30, 2000 hearing, the claimants  
14 stated:

15 Unfortunately, . . . we do conclude  
16 that there are such philosophical  
17 differences between the parties that  
18 we hereby call on the Commission to  
19 put back on your agenda the  
20 consideration of the parameters and  
21 guidelines at your next meeting.  
22 While we will look forward to  
23 continuing discussions with the  
24 administration, we do not believe  
that they are likely to be productive.  
We do not believe at this point  
we have sufficient response from  
the administration to give us any  
in-depth ability to be able to  
assure you that over the course  
of these six months that you had  
set aside that the negotiations  
are going to reach conclusion.

25 "Based on this request, the Commission  
26 notified the claimants that they must  
27 provide a written request to place the  
28 Special Education Parameters and Guidelines



1           on the next agenda. On the afternoon of  
2           March 30, 2000, the claimants filed" this  
3           request:  
4           "Staff notes that the following legal issues  
5           are before the Commission concerning the  
6           Special Education Parameters and Guidelines:  
7           Offsets and Uniform Cost Rates. Currently,  
8           staff has forwarded three options for the  
9           Commission's consideration regarding the  
10          first legal issue, offsets.  
11          "OPTION 1A:     The Commission finds that  
12          only four program areas received revenue  
13          specifically intended to fund the costs  
14          of those program areas. However, the  
15          Commission finds that these programs were  
16          not specifically funded in an amount  
17          sufficient to fund the entire cost of the  
18          state mandate. Accordingly, the Parameters  
19          and Guidelines must include language to  
20          explain that additional revenue specifically  
21          intended to fund the cost of the state  
22          mandates shall be deducted from the costs  
23          claimed.  
24          "OPTION 1B:     The Commission finds that  
25          the state has provided additional revenue  
26          specifically intended to fund the eight  
27          program areas in an amount sufficient to  
28          fund the cost of these programs. Therefore,

1           the claimants are not entitled to reimbursement.

2           "OPTION 1C:       Is Department of Finance's

3           Proportional Offset Approach.

4           "In addition, staff proposed the following

5           options for the second legal issue, Uniform

6           Cost Rates:

7           "OPTION 2A:       The Commission finds that

8           the use of Uniform Cost Rates in the Special

9           Education Parameters and Guidelines is

10          consistent with the Commission's statutes

11          and regulations;" therefore,

12          "If the Commission adopts OPTION 2A, the

13          Commission must determine if the Uniform

14          Time/Cost Allowances in staff's or the

15          claimants' Proposed Parameters and Guidelines

16          are reasonable and should be adopted as

17          proposed or modified, in whole or in part.

18          After making these determinations, staff would

19          prepare a revised version of the Proposed

20          Parameters and Guidelines to present to the

21          Commission for adoption.

22          "OPTION 2B:       The Commission finds that

23          Uniform Cost Rates do not provide the level

24          of detail necessary to ensure that the state

25          is paying the proper amount for the eight

26          program areas. Therefore, this claim requires

27          the use of actual documentation and striking

28          of all references to averages, uniform

1           allowances, and time studies from the Special  
2           Education Parameters and Guidelines.  
3           "If the Commission adopts OPTION 2B, the  
4           Commission must decide which version to adopt  
5           as proposed or modified, in whole or in part.  
6           After making these determinations, staff will  
7           present a revised version of the Proposed  
8           Parameters and Guidelines."  
9           Will the parties please state their names for the  
10          record.  
11           MR. CLARKE: Certainly. Good morning. My name is  
12          Jack Clarke. I represent the Riverside County Superintendent  
13          of Schools.  
14           MS. MCDONOUGH: Diane McDonough, Lozano Smith Law  
15          Firm, on behalf of Education and Legal Alliance and the  
16          Education Mandated Cost Network representing supplemental  
17          claims.  
18           MR. STONE: Dan Stone with the Attorney General's  
19          Office representing the Department of Finance.  
20           MS. RADTKEY-GAITHER: Kathryn Gaither, Department of  
21          Finance.  
22           MR. MURRAY: Anthony Murray for the Long Beach  
23          Unified School District.  
24           CHAIRPERSON PORINI: All right. We will begin with  
25          having the claimants and Department of Finance make some  
26          introductory statements and allowing the Commission to  
27          respond to those. Unless there is any other comment that the  
28          claimants want to make at this time, we're prepared to go

1 ahead and have the discussion.

2 MR. CLARKE: I believe there is a comment that we'd  
3 like to inform the Commission of, at this time. Would that  
4 be appropriate?

5 Department of Finance, I guess, would like to start.

6 CHAIRPERSON PORINI: All right.

7 MS. RADTKEY-GAITHER: Thank you. We have had --  
8 since the last letter was written to the Commission, we have  
9 had some meetings and some negotiations, and I think both the  
10 administration and the claimants feel that there have been  
11 positive discussions. And, at this time, I think we believe  
12 it would be in the best interest of all parties if this  
13 matter were continued to give us further opportunity to  
14 attempt to reach a settlement as part of the budget process.

15 CHAIRPERSON PORINI: Claimants, do you agree or --

16 MR. CLARKE: On Behalf of Riverside County  
17 Superintendent of Schools, we would agree to that.

18 MS. MCDONOUGH: May we ask that Owen Waters, who's  
19 our negotiator, say a few more words regarding that matter?

20 CHAIRPERSON PORINI: All right. And then the  
21 Treasurer has to be out of here by the morning.

22 MR. ANGELIDES: No, you go first.

23 MR. WATERS: My name is Owen Waters and I think that  
24 you've met the other members of our negotiating team at your  
25 last meeting, Ken Hall, who has been working with us along  
26 the way, as well as Bill Whiteneck (phonetic) and our  
27 emeritus consultant Paul Goldfinger and Dr. Carol Berg who's  
28 also participated in negotiations along the way. I hope

1 you'll indulge me this morning because I have more than a few  
2 comments that I'd like to make about this experience and  
3 where I think we're going.

4 I don't know most of you, although I know some of  
5 you, and I actually came out of retirement a year ago to work  
6 on this project, happily retired in Austin, Texas. And I  
7 came to work on this project because there had been a change  
8 in administration, a change in the temperament politically in  
9 this state that I was very sympathetic to, and I was hopeful  
10 that we could bring this issue to the point where new  
11 personalities and new philosophies that were coming into  
12 power would have an opportunity to evaluate and move forward  
13 in a positive way, to put an end to 20 years of difference  
14 and dispute, hard feelings on both sides, and a calculus that  
15 I think is one of the most negative that we've experienced in  
16 this state and, that is, that the ultimate effect of this  
17 case is not to pit the State of California against education;  
18 it pits the regular classroom pupil against the special ed.  
19 pupil. That's where the money has come from over the past 20  
20 years. It comes out of the regular classroom to make up for  
21 the services that aren't being provided for and supported by  
22 the state.

23 I think that's a terrible dynamic. It's one I  
24 fought my whole career, so I signed on with the Legal  
25 Alliance, California School Board Association. I worked with  
26 the various client groups that are a party to this issue, and  
27 you can imagine what the first few meetings must have been  
28 like coming into this, and saying: Let's sit down and talk

1 to the governor of this state. Let's sit down and try to  
2 work out some kind of a settlement.

3 Well, why would I think that could happen? Well,  
4 before I retired, in July of '97, the last project I worked  
5 on was the C.T.A.B. Gould (phonetic) settlement. That was a  
6 5.4 billion-dollar difference of opinion between the State of  
7 California and education, and we were able to work that out.

8 Previous to that time, I also had an opportunity to  
9 work on Proposition 111, the gasoline tax. I worked on the  
10 developments, the passage, and the defense of Proposition 98.  
11 I spent four years of my career working on that. And I  
12 started my career on the collective bargaining statute in  
13 this state.

14 So my point is: I know negotiations when I see  
15 them. I know when people are trying to reach an agreement.

16 (Whereupon Joseph Mullender entered and is at the table.)

17 MR. WATERS: Now, I had every confidence that we  
18 could get this done. I've worked with the current governor  
19 in different situations, solved a lot of difficult problems.  
20 I've known Tim Gage for 20 years. I've known a lot of the  
21 people on the other side for a very long time, but, in the  
22 last 24 hours, I'm giving strong consideration to withdrawing  
23 as the spokesman for our group, and I'll tell you why.

24 I'm losing confidence that this is possible to  
25 happen. I'm losing confidence that there is the intent, that  
26 there is the purpose, to get this settled. Now, we've had  
27 many meetings. We've had many discussions. We're generally  
28 pretty affable when we meet. There has been very few harsh

1 words, but I can tell you: I've seen very little progress.

2           Now, some people would say the fact that the  
3 governor and the administration has made a proposal at all  
4 should make us happy. Well, the fact is: It's not close  
5 enough for us to take back to our thousand voters. A  
6 thousand school districts in this state would have to sign  
7 off on a green. Each one with one vote, one signature, to  
8 waive their rights in exchange for a settlement.

9           Now, I'm not going to go into the details of our  
10 negotiations because that would violate our internal rules  
11 but let me say this: I have led this group from the very  
12 beginning to believe that a settlement was possible with this  
13 governor. And what I'm concerned about is the following: We  
14 are losing, at the same time, another opportunity, which is  
15 to fight this out legislatively, through the legislative  
16 leadership of this state, who are very sympathetic to this  
17 issue, who have been calling us, recently, saying, "What's  
18 going on with these negotiations? Where are they? What can  
19 I do to help?"

20           Now, I know the governor has a lot of things to do.  
21 I think it's important to work on these various issues, but,  
22 you know, all during these negotiations, I have never seen  
23 this governor at the table. During all of these  
24 negotiations, there's not been one high-ranking official from  
25 the corner office sitting in on these negotiations.

26           Now, there's a message there, at some point. I  
27 mean, I did actually meet the past three governors that I  
28 negotiated with in some fashion. They actually presented

1 themselves and their top staff people presented themselves.

2           So are we really going to get a settlement here?

3 The thing I'm most concerned about is: On May the 31st, the  
4 conference committee for this year's budget will begin to  
5 meet. I know there is sympathy for our issue with the senate  
6 pro tem, Mr. Burton (phonetic). I know that Mr. Hertzberg  
7 (phonetic) is concerned about this issue, and, in fact, there  
8 are many republicans members who are concerned about this  
9 issue. Mr. Leonard (phonetic) has brought this up on several  
10 occasions within the budget process. And, frankly, special  
11 education students and parents have many friends in the  
12 Legislature. I won't name them all for you but many  
13 influential legislators care about this issue.

14           Now, by negotiating with the Governor's Office and  
15 with the Department of Finance, we are missing, potentially,  
16 this political opportunity, because we have agreed not to  
17 address the political leadership, not to put this into the  
18 political process. But how long can we wait before this  
19 budget is closed out and that money is spent, reallocated, to  
20 other needs of the state? That is our problem.

21           Now, I wonder if I've given the right advice to my  
22 clients, to the people that I represent. Have we made a  
23 terrible mistake here in not politicalizing this issue, in  
24 not bringing it to the Legislature, not giving it to and  
25 working with legislative leadership? I don't know what the  
26 answer is. I've been mulling that over for the past  
27 twenty-four hours, and I've been suffering through this.

28           What do I think is going to happen? I think we're



1 going to be right back here in ten days with the same  
2 situation we have right now. I don't see that we're going to  
3 get a settlement. I don't see the momentum for a settlement.  
4 That's just my opinion. I mean, I've been in a lot of  
5 negotiations and I just don't sense that we're getting there.  
6 I don't sense that we're having the kind of exchanges that  
7 people make when they're trying to make a deal.

8           So here's what I think is going to happen -- and  
9 this will be my last opportunity, probably, to talk to you,  
10 so this is just my best guess. My best guess is that  
11 you're going to face voting on these P's and G's and you're  
12 going to face the issue of whether you're going to vote for  
13 the Department of Finance and the governor's position on the  
14 issue of offset.

15           I think you will not vote affirmatively on the  
16 offset position that they've espoused. I think you will  
17 adopt the P's and G's pretty much as they stand, and I think  
18 this issue will go forward, and school districts around this  
19 state will be filling out the necessary forms next fall to  
20 make their claim, their legitimate claim, for reimbursement  
21 for these mandates.

22           I believe that we will produce a billion dollars in  
23 cost claims, or very nearly that. I believe the State of  
24 California will owe school districts somewhere between 150  
25 and 175 million dollars. And I think that what we're also  
26 going to see is the Department of Finance and the governor  
27 will be forced into a very difficult series of legal  
28 maneuvers.

1           One: Will they be able to get a temporary  
2   restraining order against the statewide-elected officer of  
3   this state in issuing the guidelines? I think not. Will the  
4   governor and the Department of Finance be able to find a  
5   judge who's going to interfere with this process after 20  
6   years? I think not. And I think that if there is a hearing,  
7   there will ultimately be raised another issue, which  
8   Mr. Angelides has referred to several times publicly, and,  
9   that is, the unintended consequence of what will happen to  
10  this issue when the issues of Proposition 98 are litigated,  
11  which they will be, at that point.

12           Now, in my opinion, we will prevail on these issues  
13  and we will also prevail on the issue of Proposition 98. And  
14  what does that mean? I'll just do it very shortly,  
15  and there'll be people who will disagree me, but, the last  
16  time we fought over Proposition 98, it turned out that we  
17  were right and they were wrong. What'll happen is: If we  
18  prevail, the Proposition 98 guarantee is going to have to be  
19  adjusted back to 1988, the base year. Why? Because this  
20  issue was not settled at that time. The reimbursement and  
21  the costs of this program were not included in the  
22  Proposition 98 base.

23           So, each and every year that schools were paid the  
24  minimum guarantee, that will now have to be adjusted upward,  
25  and we'll have to go back and calculate what the state owes  
26  education. That is going to have an enormous impact on the  
27  state budget. Maybe in a year that's not so robust as this  
28  one, maybe in a year where we're not worried about how we

1 give money away, are we going to give it all to taxpayers?  
2 Are we going to give it to every citizen? The children? You  
3 know, maybe their animals. I have no idea. But we may not  
4 have the prosperity that we have now. We may not have the  
5 kinds of discussions we're having now about the bounty of our  
6 economy. So what I'm concerned about is that the impact of  
7 this is going to fall in a year which will be very difficult  
8 and will impact other programs and Californians.

9           The one thing I'm absolutely clear about is:  
10 Education is not going to go away, and the forces that have  
11 prevailed and are pressing this case forward are not going to  
12 go away. So I'm very nervous about where we are, because I  
13 think that it's a mistake to go over the edge. I think it's  
14 a mistake not to get a settlement.

15           But let me be clear about this: You cannot go back  
16 to the school districts of this state with an offer that's  
17 not reasonable and fair. And I have been quoted in the press  
18 over and over again saying: We are not asking for every  
19 dollar; we're asking for something reasonable and fair, after  
20 20 years. And when you look at the amounts of money that are  
21 involved here, our position at the bargaining table, I  
22 absolutely assure you when this becomes public, if there's  
23 not a settlement, our numbers are going to look extremely  
24 reasonable in comparison with those numbers that had been  
25 developed either by the Department of Finance or by ourselves  
26 or by anyone else.

27           So I guess what I want to say here is that, for  
28 whatever it's worth, I would hope, at some point, that we

1 would actually negotiate and get this thing done so that we  
2 can take a proposal back to the thousand school districts and  
3 county offices of this state and get this thing settled.  
4 But, at this point in time, unless something happens in the  
5 next few days, within hours, before the conference committee  
6 starts, I'm not at all sure we're headed there. And I'm  
7 sorry to be reporting that to you.

8 CHAIRPERSON PORINI: Commissioner Angelides.

9 MR. ANGELIDES: Thank you. Thank you, Mr. Waters.  
10 I appreciate all you said. Actually, I have a number of  
11 comments. Well, let me start with a question of counsel.

12 If this matter were to be continued, are we required  
13 to continue it ten days or can we, in fact, continue it for a  
14 shorter time period?

15 MS. JORGENSEN: We could continue it for a shorter  
16 time period but we would have to do it with the emergency  
17 notice procedures, but I don't think it would be -- the  
18 emergency notice is ten days.

19 MR. ANGELIDES: Does the emergency notice procedure  
20 require two-thirds vote of the Commission?

21 MS. JORGENSEN: No. No. It requests the notice  
22 requirements going through and getting the notice out to the  
23 press. We could do it but it's my understanding that --

24 MR. ANGELIDES: Can we recess a meeting?

25 MS. JORGENSEN: You still would have to do the  
26 notice.

27 MR. ANGELIDES: So June 5th is the earliest day  
28 by which we could have a continuance?

1 MS. JORGENSEN: It is, with the regularly noticed  
2 proceedings.

3 MR. ANGELIDES: Well, stay with me, then, for a  
4 minute, on the emergency notice proceedings. Tell me how  
5 this would work. Then I want to -- actually, I just want to  
6 deal with this for a moment and then I want to deal with the  
7 substance.

8 MS. JORGENSEN: Okay. I have one question. Is it  
9 possible that we could have a meeting before June 5th, and  
10 that's --

11 MR. ANGELIDES: Is that yes?

12 MS. JORGENSEN: No. I'm wondering if it's possible.

13 MR. ANGELIDES: Well, let me just say something,  
14 and I do want to -- and I'll give you time to respond to  
15 this.

16 MS. JORGENSEN: Okay. I'm looking at --

17 MR. ANGELIDES: I'm deeply concerned about the fact  
18 that the conference committee is starting on May 31st. And,  
19 as someone who's been actively trying to get the parties to  
20 engage and come to resolution here, not just for the sake of  
21 resolution but for the sake of good public policy, to  
22 adequately fund special education in the State of California,  
23 particularly in the context of a state that, in aggregate, is  
24 very wealthy and doing well, it ought to have the resources  
25 on a reasonable basis to resolve this issue, both going  
26 backwards and on a going-forward basis, I'm very anxious that  
27 if there is a resolution not possible, that, frankly, that  
28 the full democratic process has an ability to work here,

1 also.

2 MS. JORGENSEN: Okay. It can be -- it says:  
3 "Notice of the additional items being  
4 considered shall be provided to each  
5 member of the state body, of all parties  
6 that have requested notice of this meeting  
7 as soon as is practicable after determination  
8 of the need to consider the items made but  
9 shall be delivered in a manner that allows  
10 it to be received by the members and by  
11 newspapers of general circulation and radio  
12 or television stations at least 48 hours  
13 before the time of the meeting specified  
14 in the notice. Notice shall be made  
15 available to newspapers of general  
16 circulation, radio or television stations,  
17 by providing that notice -- that notice  
18 to all national press-wired services and  
19 it shall be placed on the electronic board."  
20 So we can do it. It is possible.

21 MR. ANGELIDES: So, in fact, we could be back  
22 earlier than the ten-day notice of --

23 MS. JORGENSEN: We would need the 48 hours' notice.

24 MR. ANGELIDES: 48 hours. And is that required, too?

25 MS. JORGENSEN: But what we'd need to do, though --

26 MR. ANGELIDES: Of course, it's --

27 MS. JORGENSEN: But, in order -- but you'd have to  
28 postpone it to a date certain.

1           MR. ANGELIDES: Correct. Okay. Let me, then, make  
2 some observations, which is that, I think as other members of  
3 the Commission know, I've actively tried to encourage both  
4 the plaintiffs, the school districts, and the claimants --  
5 excuse me, not the plaintiffs, the claimants, the school  
6 districts, as well as the administration, to do it all that  
7 it could to resolve this matter after nineteen -- close to  
8 twenty years of dispute and no movement.

9           My interest in doing that has not just been to wrap  
10 this up in a neat package. You know, it hasn't been really  
11 driven by process but rather my belief that the best way to  
12 protect the long-term fiscal position of the state and, I  
13 underline "and," provide the resources for special education,  
14 both on a retroactive and an ongoing basis that would allow  
15 districts to adequately provide services to special education  
16 children in this state, was for the parties to sit down and,  
17 on a public policy basis, not in a courtroom, which is never  
18 the best forum for rational resolution but rather on a public  
19 policy basis, to craft the resolution and amend those dual  
20 objectives.

21           I am very aware of what Mr. Waters has said today  
22 about the time frame, and the fact is that the clock is  
23 running on the 1999 and the Year 2000 legislative session. I  
24 don't want to see this process go on at infinitum, but, at  
25 the same time, though, Mr. Waters, you're less than hopeful,  
26 is that a fair characterization?

27           I mean, I understand that you're saying that you  
28 think this is going to be very difficult to achieve, because

1 you have not seen the signs of full engagement from the other  
2 negotiating party, and that's your view that you stated to us  
3 today. And, without me characterizing that, I do believe  
4 that the issues are known by both parties. I think the  
5 public policy ramifications are known by both parties. And,  
6 given the fact that the budget process is now moving quickly,  
7 I do think that this process needs to, in a sense, go up or  
8 down.

9           Having said all that, though, I really want both  
10 parties -- and this is just one member of the Commission, but  
11 one member of the Commission, if I can count right, who  
12 actually may well determine or have a large role in  
13 determining what happens when we come back. I want folks to  
14 take one more genuine stab at this in the next few days. I'm  
15 not saying about the next few weeks, but, in the next few  
16 days, to see if you can, in fact, craft that public policy  
17 resolution. And I'm looking not just at you, because you  
18 happen to be facing me, but also at the administration to say  
19 I genuinely believe this is the best thing to do, and I can't  
20 urge strongly enough for the parties to come together,  
21 because, in fact, if that does not happen, what we will have  
22 is we will have a battle either here in the Commission, in  
23 the courts or in the Legislature, the result of which none of  
24 us can contemplate. And it is always better, in my  
25 experience -- I'm not that old but, at 46, it's always  
26 better, in my experience, for people to come together and  
27 craft public policy resolutions that work. And I very much  
28 hope that happens.



1           Now, we could go to June 5th, but my inclination is  
2 to say let's shorten this time frame up. Let's ask people to  
3 get in the room and either they'll get in the room or they  
4 won't. At which point there will be the full opportunity for  
5 both the Commission as well as the Legislature, if that's  
6 needed, to engage in this issue and come to a resolution,  
7 perhaps in another forum, or, if things don't work,  
8 unfortunately, this will hurdle towards a dispute resolution.

9           I'd like to ask if -- I'm going to actually suggest  
10 today that we think about coming back on Friday, June 2nd,  
11 you know, mindful of the fact that, you know, we're on the  
12 long weekend, that gives parties the opportunity to, well,  
13 either work the weekend and/or work during next week as the  
14 budget conference committee begins to ramp up. And I'd like  
15 to see us come back on June 2nd. It may not seem a lot to  
16 move it from June 5th to June 2nd, but I think in the context  
17 of the conference committee process, I think we owe that in  
18 fairness.

19           I mean, I feel -- I'm going to tell this to my  
20 fellow commissioners: I feel that I owe it to the claimants  
21 in that I persuaded them to take a shot at what has now  
22 become a six or nine-month process, and I do think -- and I  
23 have my good friend Annette Porini here, I do think there's  
24 really a -- I think if there's a deal to be made, a public  
25 policy resolution to be reached, it can -- we will know by  
26 next Friday as well as we know by next Monday if it's a  
27 reality or a possibility.

28           So I'm going to make a motion, and I hope there will

1 be a second, that we continue this matter, and it would be --  
2 I want to say this would be the final continuance that I  
3 would contemplate moving, unless both parties came back on  
4 June 2nd and said, "Listen we're really making a transaction  
5 here and we need a few more days to dot the i's and cross the  
6 t's. It would be my last intended movement for a  
7 continuance.

8 MS. JORGENSEN: Can I ask a question?

9 MR. ANGELIDES: Yes.

10 MS. JORGENEN: Would you also like to notice a  
11 meeting for June 5th, do a regular ten-day notice or --

12 MR. ANGELIDES: Well, I guess what we could do is  
13 we could do June 2nd and June 5th in case we needed to come  
14 back twice, and that way we dispose of notice requirements.  
15 If we don't need June 5th, we don't need June 5th. But I  
16 would like to move that we continue this meeting. And I  
17 don't have a schedule, so I would ask -

18 CHAIRPERSON PORINI: That was going to be one of my  
19 suggestions, that maybe we ought to check with folks who  
20 don't live here in town and who are on this Commission to see  
21 if they're even available to be here on the 2nd.

22 MR. ANGELIDES: All right.

23 CHAIRPERSON PORINI: Because, if we don't have a  
24 quorum, we can't --

25 MR. BELTRAMI: Madam Chairman, I will be having oral  
26 surgery on Wednesday and I don't think I'll want to come over  
27 on Friday.

28 MR. ANGELIDES: Can I ask you, Al, does that mean

1 that you won't want to come on Friday?

2 MR. BELTRAMI: I don't think I'll be in shape to  
3 come on Friday.

4 MR. ANGELIDES: Well, it depends on what your side  
5 you're on. The people would be happy to wheel you in here.  
6 All right. So you can't be here on Friday?

7 MR. BELTRAMI: I don't think so. I don't think so.

8 CHAIRPERSON PORINI: Mr. Treasurer, I hate to  
9 interrupt you in the middle of your motion, why don't we go  
10 ahead and have you continue with your motion and make it the  
11 meeting on the 2nd, subject to confirmation that we have a  
12 quorum attending.

13 MR. ANGELIDES: Well, let's do this, though,  
14 because, you know, frankly, this is material.

15 CHAIRPERSON PORINI: Yes, it is.

16 MR. ANGELIDES: Well, actually, this one statement  
17 has been material.

18 Is there anyone else, just out of curiosity, who is  
19 not available on the 2nd?

20 CHAIRPERSON PORINI: Well, do you know from the  
21 controller's standpoint?

22 MR. FOULKES: No.

23 CHAIRPERSON PORINI: You don't?

24 MR. LAZAR: I can be here as long as it's in the  
25 morning.

26 CHAIRPERSON PORINI: The morning.

27 MR. ANGELIDES: But I'm looking at -- candidly, I  
28 think every member is going to count that day, unless my math

1 is particularly bad. Then I'm going to do this then: My  
2 comments stand in this sense. I guess that I would have to  
3 move, then, that we go to June 5th is what I seem to be  
4 hearing, that I want to move that we notice this for  
5 June 5th.

6 MS. STEINMEIER: I'll second it.

7 MR. ANGELIDES: I was going to say if we could do it  
8 in the morning. The reason I'm going to do this as a motion  
9 is because I don't want to lose any more days, because I  
10 don't think we can afford to do that. I'd like to set it at  
11 9:30 in the morning.

12 MS. STEINMEIER: That's fine.

13 CHAIRPERSON PORINI: All right. So we're not using  
14 the emergency provisions of Bagley-Keene (phonetic). We'll  
15 do a regular meeting notice for a morning meeting on  
16 June 5th. We have a motion and a second.

17 Is there any further discussion?

18 MR. ANGELIDES: I want to add this, just one last  
19 comment, which is: This ought to get done for the children  
20 of the people of the California and it ought to get done for  
21 the fiscal health of the state. And, in the context of a  
22 state that is looking at a budget surplus, depending on who's  
23 counting, upwards of ten billion up to thirteen billion  
24 dollars, we ought to be able to find a way to get this done.  
25 It's the right thing to do.

26 So I'm very hopeful that the matter can move to  
27 resolution. I'm very hopeful that the next 72 hours, that  
28 time frame, will yield some definitive movement in this

1 regard, and, if not, we'll act on the 5th, and the discussion  
2 will have a broader arena after that time.

3 CHAIRPERSON PORINI: All right. Any further  
4 discussion?

5 Mr. Foulkes.

6 MR. FOULKES: Thank you, Madam Chair. Just to  
7 reiterate the controller's position on this issue, as you  
8 know, the last two delays we've had she's felt very strongly  
9 that the negotiations would not be fruitful and, indeed, it  
10 would be better for the Commission to go ahead and move  
11 forward. As Mr. Waters said, that that indeed has been the  
12 case. And so we will be, as our policy, voting no on a  
13 continuance.

14 We do understand where things are today; however,  
15 I'm not sure that we're any closer than we were back then in  
16 February, and I would hope that, come June 5th, that this  
17 Commission would vote up or down, regardless if there's not  
18 an agreement of parties, just because, again, we are being  
19 currently attacked in the Legislature for acting slowly and  
20 not taking care of business that we have at hand, and I think  
21 that this is an example of a case that really is way past due  
22 and it needs to be dealt with by this Commission, one way or  
23 the other.

24 CHAIRPERSON PORINI: All right.

25 Mr. Angelides.

26 MR. ANGELIDES: Yeah. Actually, I just want to make  
27 one response to the controller's position, which is: You  
28 never succeed unless you try. And, you know, after 19 years,

1 there's no question, I think, in anybody's mind that a  
2 negotiated resolution is the best result. It avoids years of  
3 litigation and years of dispute, and so notwithstanding, you  
4 know, frankly, what I think is an easier vote, just to say  
5 "get on with it," I want to return to the fact that even if  
6 there's a five-percent chance here, it's worth a shot. Let's  
7 take it. Let's try to make it happen.

8 CHAIRPERSON PORINI: Ms. Steinmeier.

9 MS. STEINMEIER: Yeah. I just want to underscore  
10 some of the things that Mr. Waters said. Really, the issue  
11 here is between pitting regular ed. kids against special ed.  
12 kids; that's the dirty little secret about this. It's  
13 getting funded but it's getting funded on the backs of  
14 regular education students. Even this very small district  
15 that I serve, it's about a million dollars a year that it's  
16 encroaching on our general fund.

17 And the other thing that I'm concerned about is:  
18 It's like saying, "If you do that one more time, then we're  
19 going to do something here," and I'm feeling a little like a  
20 mother who keeps threatening her kids to get the job done and  
21 then keeps putting it off. Part of me says I'd just like to  
22 move this on, but, if there is any slight glimmer of hope,  
23 knowing that the window is shutting rapidly, I would be  
24 willing to go to June 5th, but that will be my absolute  
25 bottom line. I will agree with the controller and we'll move  
26 on, if June 5th comes and goes and we are at the same  
27 position we are at today.

28 This is very disappointing that something real

1 isn't happening, Mr. Waters, but, like the treasurer said, if  
2 there's even a slight glimmer of hope that we can resolve  
3 this, we'll give you a few more days, but no longer, because  
4 then other options are being foreclosed, and that's not fair  
5 to the claimants.

6 CHAIRPERSON PORINI: All right. Is there any  
7 further discussion?

8 We have a motion and a second.

9 May we have role call.

10 MS. HIGASHI: Mr. Angelides?

11 MR. ANGELIDES: Aye.

12 MS. HIGASHI: Mr. Beltrami?

13 MR. BELTRAMI: Aye.

14 MS. HIGASHI: Mr. Foulkes?

15 MR. FOULKES: No.

16 MS. HIGASHI: Mr. Lazar?

17 MR. LAZAR: Aye.

18 MS. HIGASHI: Mr. Nissen?

19 MR. NISSEN: Aye.

20 MS. HIGASHI: Ms. Steinmeier?

21 MS. STEINMEIER: Aye.

22 MS. HIGASHI: And Ms. Porini?

23 CHAIRPERSON PORINI: Aye.

24 MS. HIGASHI: Motion carries.

25 CHAIRPERSON PORINI: All right. We're going to take  
26 a five-minute recess to allow folks to clear the room and  
27 then we'll continue on with our regular agenda. Thank you.

28 (Whereupon a brief break was taken.)

1           CHAIRPERSON PORINI: We'll go ahead and resume the  
2 meeting on our regular agenda now.

3           We have approval of minutes.

4           MS. HIGASHI: I'd just like to announce that  
5 Mr. Sherwood is representing Mr. Angelides now.

6           CHAIRPERSON PORINI: All right.

7           MS. HIGASHI: We have the minutes for April 27,  
8 Item 2.

9           CHAIRPERSON PORINI: All right.

10          MR. FOULKES: Move approval.

11          CHAIRPERSON PORINI: Okay.

12          MR. SHERWOOD: Second.

13          CHAIRPERSON PORINI: All right. We have a motion  
14 and a second.

15          All those in favor say "aye."

16          (Unanimous response by the Commissioners of "aye.")

17          CHAIRPERSON PORINI: That carries.

18          Next item.

19          MS. HIGASHI: Our next item is the proposed consent  
20 calendar. It's been distributed. It's on blue paper. The  
21 consent form consists of: Item 4, statewide cost estimate  
22 for the criminal background checks test claim; Item 8,  
23 standardized emergency management system statement of  
24 decision; Item 10, seriously emotionally disturbed pupils,  
25 out-of-state mental health services' statement of decision  
26 with a correction on page 11 under the conclusions,  
27 substitute the word "counties" for "County Offices of  
28 Education"; and Item 11, the statement of decision on the



1 dismissal of the withdrawn portions of the special ed. test  
2 claimed filed by the Santa Barbara County Superintendent of  
3 Schools with the State Board of Control.

4 Recommend adoption.

5 CHAIRPERSON PORINI: All right. Move the consent --

6 MR. SHERWOOD: I'll move approval of --

7 MR. LAZAR: Second.

8 CHAIRPERSON PORINI: We have a motion and a second.

9 All those in favor indicate with "aye."

10 (Unanimous response by Commissioners of "aye.")

11 CHAIRPERSON PORINI: Opposed?

12 (No response.)

13 CHAIRPERSON PORINI: That passes.

14 MS. HIGASHI: This brings us to Item 3, review of  
15 claiming instructions issued by the State Controller's  
16 Office. This item will be presented by Mr. Scribner.

17 MR. SCRIBNER: Good morning.

18 "After adoption of Parameters and  
19 Guidelines, the State Controller issues  
20 its Claiming Instructions, which are  
21 derived from the statute or executive  
22 order creating the state mandated program  
23 and from the Parameters and Guidelines  
24 adopted by the Commission.

25 "If requested by a local governmental  
26 entity, the Commission must review the  
27 Claiming Instructions to determine whether  
28 any modifications are appropriate. However,

1 prior law limited the Commission's power to  
2 modify the State Controller's Claiming  
3 Instructions 'for reimbursement of mandated  
4 costs' to modifications regarding the  
5 'inclusion or exclusion of specific cost  
6 items.' The claimant requests the Commission  
7 review six items within the State Controller's  
8 Claiming Instructions for the Pupil Suspensions:  
9 Parent Classroom Visits program.

10 "The Commission originally heard this  
11 item at the April 23, 1998 and July 23, 1998  
12 hearings. At the July 23, 1998 hearing, the  
13 Commission remanded the matter to staff to  
14 define the term "specific cost items" as used  
15 in Government Code Section 17571.

16 "Statutes of 1999, Chapter 643 amended  
17 Government Code Section 17571 to provide that  
18 Claiming Instructions are to conform to the  
19 Commission's Parameters and Guidelines. Staff  
20 interprets this statute to be prospectively  
21 only and does not apply to this request.  
22 Therefore, staff's review of these Claiming  
23 Instructions is based on the previous version  
24 of Section 17571, which provided:

25 The Commission, upon request of a local  
26 agency or school district, shall review the  
27 claiming instructions issued the the Controller  
or any other authorized state agency for  
reimbursement of mandated costs, and may  
28 modify these instructions with regard to the  
inclusion or exclusion of specific cost items.

1           "Staff finds that, in this case, an  
2           analysis of the dictionary definition of  
3           the words that comprise the phrase 'specific  
4           cost items' does not aid the Commission in  
5           determining the underlying meaning of the  
6           phrase as it relates to the Commission's  
7           authority under Government Code Section 17571.  
8           Staff further finds that determining the  
9           meaning of this phrase within the context  
10          of mandates law would provide the Commission  
11          with a better understanding of the meaning  
12          of the phrase and its effect on the  
13          Commission's authority to review Claiming  
14          Instructions.

15          "Staff analyzed the phrase 'specific  
16          cost items' within the context of mandates  
17          law and concludes that the Commission's  
18          primary authority to modify Claiming  
19          Instructions 'with regard to the inclusion  
20          of exclusion of specific cost items' is  
21          limited to items within the Commission's  
22          authority to prescribe in the adoption of  
23          Parameters and Guidelines and items relative  
24          to costs and activities specifically  
25          addressed and included in the Parameters  
26          and Guidelines. However, within the  
27          context of mandates law as it applies to  
28          the State Controller, staff concludes, as

1 explained in its analysis, that the Commission  
2 has secondary authority to determine whether  
3 the Claiming Instructions are consistent  
4 with the statute or executive order that  
5 creates the state mandated program.

6 "Mandates law requires the State Controller  
7 to issue Claiming Instructions within 60 days  
8 of adoption of Parameters and Guidelines and  
9 authorizes the State Controller to prescribe  
10 the manner in which local agencies and school  
11 districts may be reimbursed for direct and  
12 indirect costs. Government Code Section 17558,  
13 subdivision (b), provides that the Claiming  
14 Instructions are to be derived from the  
15 statute or executive order that creates  
16 the state mandated program and the parameters  
17 and guidelines adopted by the Commission.  
18 Once local agencies and school districts  
19 file their reimbursement claims, it is the  
20 State Controller's duty to audit the claims  
21 and pay all costs that are correct and valid.  
22 Government Code section 17588.5, subdivision  
23 (b), requires the State Controller to specify  
24 the audit components adjusted, the audit  
25 amounts adjusted, and the reason for the  
26 audit adjustment. Accordingly, staff  
27 concludes that under mandates law, it is  
28 within the State Controller's authority to

1           prescribe the manner in which claims for  
2           reimbursement or direct and indirect costs  
3           are filed and documented to the extent  
4           that these instructions assist the claimant  
5           in preparing a verifiable claim for  
6           reimbursement.

7                       "Accordingly, staff reviewed claimant's  
8           request for modifications to determine  
9           whether the exclusion or inclusion of specific  
10          cost items in the Claiming Instructions were  
11          either inconsistent with or beyond the scope  
12          of the Parameters and Guidelines, or  
13          inconsistent with the statute or executive  
14          order that created the state mandated program.  
15          Based upon this review and analysis, Staff  
16          reaches the following conclusions:

17          That claimant's request for the modifications,  
18          numbered 2 and 4, the staff analysis, should  
19          be granted. However, as noted by staff,  
20          the State Controller has indicated that  
21          it will modify its Claiming Instructions  
22          to address the claimant's request.  
23          Staff concludes that this modification  
24          should be applied retroactively. If the  
25          modification is not timely issued, staff  
26          recommends that the Commission direct the  
27          State Controller to make this modification  
28          and to apply it retroactively.  
29          Staff concludes that the remaining requests  
30          for modification, numbered 1, 3, 5 and 6  
31          in the analysis, should be denied because  
32          there is no evidence that these Claiming  
33          Instructions are either inconsistent with  
34          or beyond the scope of the Parameters and  
35          Guidelines, or are they inconsistent with  
36          the statute or executive order that created  
37          the state mandated program.

38                       "Staff recommends that the Commission

1           approve the requests for modification,  
2           numbered 2 and 4, and, in the event the  
3           State Controller's modifications, prepared  
4           pursuant to this request, are not timely  
5           issued, direct the State Controller to make  
6           these modifications and apply them retroactively.

7                       "Staff recommends that the Commission  
8           deny the requests for modifications numbered  
9           1, 3, 5 and 6."

10           Will the parties please state their names for the  
11   record.

12           MR. PETERSEN: Keith Petersen. My capacity is  
13   special counsel for the Education Mandated Cost Network.

14           MR. CUNNINGHAM: Jim Cunningham, San Diego Unified  
15   School District.

16           MR. YEE: Jeff Yee, State Controller's Office.

17           MR. VORHIES: Paige Vorhies, State Controller's  
18   Office.

19           CHAIRPERSON PORINI: All right. Who would like to  
20   begin?

21           MR. CUNNINGHAM: I'd like to ask a procedural  
22   question, if I could, first. I'm not sure if Mr. Foulkes  
23   will be recusing himself from this item.

24           MR. FOULKES: No. As I understand, we do not. We  
25   act independently as a member of this Commission on these  
26   issues, and, for that reason, we never have discussions with  
27   folks in our office and do not, as a quote, recuse ourselves  
28   from these issues.

1           MR. CUNNINGHAM: Okay. Thank you. We disagree with  
2 the staff analysis in several places. Initially, in page  
3 CI-7, in the first paragraph, staff, in this paragraph,  
4 states that Chapter 643 of the statutes of 1999 is  
5 "prospective only and does not apply to this request"; that's  
6 not correct.

7           Chapter 643 changes the remedy for the controller's  
8 violation of her duty to derive claiming instructions from  
9 Parameters and Guidelines that are adopted by the Commission.  
10 Statutes that change remedies must be applied to pending  
11 actions. And that, in fact, has been the past practice of  
12 this Commission.

13           When SB 11 was adopted in 1996, the Commission  
14 applied the SB 11 rules to all pending test claims. This  
15 Commission also did the same thing when it adopted its  
16 reconsideration regulations. It adopted it. And, in that  
17 same meeting, applied it to two pending requests for  
18 reconsideration.

19           Under Government Code Section 17571 as amended, the  
20 Commission must order the Controller's Office to amend the  
21 claiming instructions to conform to the Parameters and  
22 Guidelines, and that is the standard that should be applied  
23 in this review. Assuming, though, that you don't agree with  
24 that position, staff application or review of the term  
25 "specific cost item" led them to believe that the meaning was  
26 not evident from the plain meaning of the words, and we  
27 agree.

28           However, staff, I think, at that point, should have

1 gone back and looked at the legislative history of this  
2 section, and we've provided those materials in earlier  
3 written submissions. 17571 derived from Revenue Tax Code  
4 Section 2253.4. Part of the legislative history on that  
5 section includes an analysis of the SB 90 bill, which became  
6 Chapter 1256 of the statutes of 1980, and, in that  
7 legislative history, the Department of Finance provided an  
8 analysis of the pending bill, SB 90.

9 Department of Finance specifically commented on  
10 Section 17 of SB 90, which is the section that added sections  
11 2253.4 and it provided -- and I'll quote that this allowed  
12 the Board of Control to, quote, "Review and amend the  
13 claiming instructions," end quote. And that this section  
14 was, quote, "Intended to ensure uniformity," end quote,  
15 between the Parameters and Guidelines and claiming  
16 instructions. So the meaning of the term "specific cost  
17 items" can only mean that they have to -- that the claiming  
18 instructions need to be uniform with the Parameters and  
19 Guidelines adopted by this Commission. These claiming  
20 instructions are not uniform with the Parameters and  
21 Guidelines that you adopted in all of the respects that we've  
22 outlined in our request.

23 Next, staff is misinterpreting my April 28 letter  
24 regarding the scope of the Parameters and Guidelines. I did  
25 not assert, and I'm sorry if I led them to believe that I  
26 asserted, that mandate law requires the Commission to include  
27 information regarding the source documents or recordkeeping  
28 in the Parameters and Guidelines.



1           What I did assert is that this Commission has the  
2   statutory duty to adopt Parameters and Guidelines. And what  
3   I further asserted is that this Commission has interpreted  
4   that authority and that duty to include several items beyond  
5   the two items that are specified in the mandated statutes.  
6   And this Commission has, over the last 15 years, included  
7   several subjects within the scope of the Parameters and  
8   Guidelines and saw that it had the authority to do so.

9           And what I have said is that where the Commission  
10   has, as a matter of practice and through the regulations,  
11   asserted authority over things, like source documents, those  
12   are Parameters and Guideline issues that would control over  
13   anything that the controller put in claiming instructions.  
14   Your Parameters and Guidelines are adopted after notice,  
15   public hearing and opportunity for all parties to place  
16   input. The State Controller's claiming instructions do not  
17   go through that process.

18           Finally, we disagree with the staff's comments on  
19   pages 10 and 11. While staff wants to limit the Commission's  
20   authority over the Parameters and Guidelines, staff wants to,  
21   at the same time, expand the controller's authority. The  
22   staff analysis includes a citation to Government Code Section  
23   17564 as the source of the controller's authority over the  
24   Parameters and Guidelines. And this section merely provides  
25   that the controller be specified in a manner in which local  
26   governments are to be reimbursed for the costs of state  
27   mandates.

28           Now mandates, if you were to go to the dictionary,

1 would be defined as the way or method that something is done.  
2 It is a procedure. Is it is not the right or the -- it has  
3 nothing to do with substance of claims; it's how claims are  
4 filed, not what the substance of the claim must look like.  
5 So this section does not provide the authority that the staff  
6 believes it does.

7           Now, second, the staff cites the Controller's  
8 authority to audit claims. Again, this does not give the  
9 Controller the right to -- excuse me, requirements on  
10 reimbursement claims, nor, as staff contends, do the  
11 Parameters and Guidelines give this right to the Controller.  
12 The Parameters and Guidelines provide the adequacy of the  
13 claimant's supporting documentation is within the purview of  
14 the State Controller as permitted by law. The State  
15 Controller's Office claiming instruction language does not  
16 address adequacy of documents; it addresses types of  
17 documents.

18           And, as further justification, staff announced --  
19 advances the controller's misrepresentation that the claiming  
20 instructions, particularly with respect to the source  
21 document issue, merely provide descriptive illustrations of  
22 the samples of types of documents that may be used. And, if  
23 that is their intent, the language does not carry out that  
24 intent, because the language itself says that -- or contains  
25 a list of documents that is preceded by the phrase "documents  
26 required to be maintained." The controller's claim through  
27 staff have, in fact, used this language to exclude certain  
28 types of documents that are acceptable for other purposes.

1           Claimants have the right to decide which source  
2 documents they believe are sufficient to support their  
3 claims. That type of supporting documentation is a local  
4 determination because local methods and practices vary.  
5 There's no valid reason to exclude any form of evidence of  
6 costs. If that evidence tends to establish the costs that  
7 are incurred by the local government to carry out a  
8 state-mandated program, that view is consistent with the  
9 Commission's own regulations, which would allow us to provide  
10 any form of evidence that is either kept in the ordinary  
11 course of business or on which reasonable persons are  
12 accustomed to rely in the conduct of the series of affairs.

13           Now, the State Controller's Office, as part of its  
14 audit function, may disagree with the sufficiency of those  
15 documents to prove the claim, but they cannot exclude the  
16 wholesale types of documents that may be used or kept by a  
17 local government to prove their claim. If there is a  
18 disagreement on sufficiency, then that matter can come back  
19 before this Commission for an initial determination and can  
20 ultimately be determined by a court of law.

21           What is most remarkable in the staff analysis is  
22 that the staff finds the source document language consistent  
23 with the Parameters and Guidelines, when, in fact, this  
24 Commission, at the Parameters and Guideline stage, and  
25 Mr. Petersen can address this because he was San Diego's  
26 representative at that time, but at the time that these  
27 Parameters and Guidelines were adopted, the State  
28 Controller's Office asked to have the exact language that we

1 are talking about today included in the Parameters and  
2 Guidelines, and this Commission said no.

3           The State Controller's Office asked the Commission  
4 not to include the time study language and this Commission  
5 said we are going to include that. And how the State  
6 Controller's claiming instructions, which go 180 degrees from  
7 what this Commission approved, can somehow be deemed  
8 consistent with the Parameters and Guidelines is beyond me.

9           CHAIRPERSON PORINI: Mr. Petersen.

10           MR. PETERSEN: Thank you. As Jim indicated, I will  
11 be discussing the modern history of this particular issue.  
12 The modern history is only about four years old. The  
13 history history is about 11 years old, and we'll stay out of  
14 that for now, but he's outlined the facts of law that this  
15 Commission has the jurisdiction to say what will be  
16 reimbursed and how it will be reimbursed through the  
17 Parameters and Guidelines.

18           Government Code 17500 gives you plenary authority to  
19 say what costs are mandated by the state. Indeed, whenever  
20 there's a dispute and we end up in court, the court nearly  
21 always remands to this Commission for you to say what costs  
22 will be reimbursed by the state. Government Code 17557,  
23 regarding the Parameters and Guidelines, says you are the  
24 single body authorized to say the amounts to be subvended to  
25 the local agencies. You have the sole authority to say how  
26 much the local agencies will be reimbursed for these  
27 mandates. In order to do that, you have to discuss  
28 activities and costs. They're within your jurisdiction. The

1 State Controller has no jurisdictions on the subject matter  
2 of the Parameters and Guidelines.

3           Onto the modern history. Jim referenced the May 30,  
4 1996 hearing on juvenile court notices and parent classroom  
5 visits. At that time, the State Controller did ask for  
6 restrictive language to be included in the Parameters and  
7 Guidelines regarding certain contractor costs. The  
8 Commission turned it down. The State Controller also asked  
9 that certain language allowing time studies in lieu of actual  
10 costs be removed from the Parameters and Guidelines; the  
11 Commission turned it down. It was quite clear, on those two  
12 items, at least, that the Commission had spoken.

13           Less than a year later, March 1997, the State  
14 Controller issued claiming instructions, 97-1, pertaining to  
15 eight new programs. The restrictive language regarding  
16 contractors, that the Commission had denied the State  
17 Controller, was placed in those instructions. The language  
18 regarding time studies, that the Commission insisted upon,  
19 was not in those Parameters and Guidelines.

20           On April 4th, 1997 the San Diego Unified School  
21 District provided an extensive list of errors in the eight  
22 claiming instructions to William Ashby, who was the Director  
23 of the Reimbursement Bureau at that time, I believe. A month  
24 and a half later, on May 22nd, the Education Mandated Cost  
25 Network also provided a list of particulars to Mr. Ashby  
26 because he had ignored or had not responded to San Diego  
27 Unified's comments.

28           On June 17, 1997, the State Controller finally

1 responded and indicated that they would discontinue the  
2 restrictive language regarding consultants and contractors  
3 but they would not include the time study language as "there  
4 are no programs for which time studies are a suitable cost  
5 method." This is contrary to what the Commission has said  
6 over and over again, that time studies are an appropriate  
7 cost finding method.

8           On April 23rd, 1998, there was another hearing on  
9 the parent classroom visits and juvenile court notices. The  
10 draft staff recommendation, faxed on April 1st, 1998 to the  
11 parties, indicated that the Commission had limited its  
12 jurisdiction to, quote/unquote, "specific cost items."  
13 San Diego Unified rebutted on April 4th, 1998, which is three  
14 days after the fax. A new version came out April 15th, faxed  
15 again on April '98, specifying that cost items are now  
16 defined as activities which are both specific and that they  
17 are tied with a particular state mandated activity and that  
18 have costs that can be reimbursed. This was the Commission  
19 staff's first attempt to define "specific cost items," which  
20 is the subject of the old Government Code section.

21           On July 13, 1998, the staff analysis was released  
22 for parent classroom visits and juvenile court notices,  
23 after the hearing was continued from the prior month, on the  
24 issue of specific cost items. Once again, the matter is  
25 continued from July 23rd, so this is the third continued  
26 hearing, because there was no agreement on the definition of  
27 "specific costs items."

28           On July 29th, the Commission staff was directed and

1 did issue a memo to nineteen interested parties asking them  
2 to provide their definition of "specific cost items."  
3 San Diego Unified School District responded on July 31st  
4 quoting the Government Code sections and the Revenue Taxation  
5 Code sections that have been included in Mr. Cunningham's  
6 most recent documents.

7           And, while we're still in a confused mode regarding  
8 what a "specific cost item" is, on October 19th, the State  
9 Controller issues claiming instructions, 98-10, for three new  
10 programs. San Diego Unified School District, as the test  
11 claimant, is allowed four and a half hours to respond to  
12 those three documents. They're faxed on the day of the  
13 deadline.

14           Is this the right one?

15           MR. CUNNINGHAM: I'm not sure. Yeah.

16           MR. PETERSEN: Okay. A response is provided and  
17 ignored. We go on with this for another page. I think  
18 you're getting the idea, first of all, that specific cost  
19 items -- an attempt was made by staff to identify it. After  
20 three hearings, it couldn't be agreed to by anyone. The  
21 latest document provided by the staff does not define  
22 "specific cost item" because the dictionary meaning is not  
23 helpful, and we're back to temporizing, that is, looking at  
24 every item that's been appealed and deciding whether it  
25 should be a specific cost item or not.

26           We don't, and you don't, have to do that. The new  
27 code section makes it quite clear that specific cost item is  
28 no longer an issue. The staff has, in the past, embraced new

1 statutes immediately on pending items. You could do the same  
2 thing. I don't know why they didn't do it this time. If you  
3 do not embrace the new statute and the result here is  
4 unsatisfactory, the parties could just file under the new  
5 statute and we get to do this all over again. So I don't  
6 know how effective that's going to be.

7           So you have the power to do this. I think you  
8 should do this, because the State Controller is not going to  
9 cooperate with your best intentions. The history is clear.  
10 You've decided certain items should be included and you've  
11 been ignored. I think it's time for you to say that you have  
12 complete control over the Parameters and Guidelines and that  
13 the claiming instructions will match your document.

14           Thank you.

15           CHAIRPERSON PORINI: All right. Claimants. I'm  
16 sorry. Mr. Vorhies, Controller's Office.

17           MR. VORHIES: I think, just to make it simple, we'll  
18 state that we agree with staff analysis.

19           CHAIRPERSON PORINI: Any questions from members?

20           Ms. Steinmeier.

21           MS. STEINMEIER: First of all, to staff, would you  
22 please address the issue about the current statute, or the  
23 new statute, and the pending -- the implied pending claims as  
24 versus only prospectively?

25           MS. JORGENSEN: Our interpretation of the new  
26 statute is it applies to Parameters and Guidelines adopted  
27 after the effective date, after the operative date of the new  
28 statute, so, therefore, we do not think it applies here, and



1 that's been our position.

2 MS. STEINMEIER: So that's a difference of  
3 opinion that the --

4 MR. PETERSEN: Well, no. That's an opinion, and  
5 Mr. Cunningham has provided the law; there's a difference.

6 MS. STEINMEIER: I follow, Mr. Petersen.

7 MR. PETERSEN: Okay.

8 MS. STEINMEIER: I think that there's -- this  
9 problem has been sort of ongoing. Mr. Petersen's litany of  
10 this, at least three years of that with my time on this  
11 Commission, this seems to be one of these issues that we need  
12 to -- we need, as a Commission, to finally just find. If we  
13 use this particular case to do it or we do it sometime in the  
14 near future, we need to do this, otherwise, it's just going  
15 to keep coming back and keep coming back. And I do agree  
16 that we need to resolve it however we, as a Commission, want  
17 to resolve it.

18 I do have another question for staff. On the  
19 rejection of Item No. 1, you're basing this on the Education  
20 Code, is that correct, Mr. Scribner? Are you the one that  
21 did this? Is it your fault?

22 MR. SCRIBNER: Um, that is correct, sorry. You are  
23 right. They added that last sentence in the Education Code,  
24 the controller did, which is consistent with the testimony  
25 and the statutes that the test claim was based upon, which  
26 they are allowed to do under the Government Code.

27 MS. STEINMEIER: Right. There's two parts: One is  
28 our Parameters and Guidelines and the other part is they can

1 go to the actual law?

2 MR. SCRIBNER: Exactly.

3 MS. STEINMEIER: And, there, they may be doing some  
4 interpretations, but, in this case, you're saying their  
5 interpretation is correct? It's news to me, you know? I  
6 mean, there are a lot of joint custody cases, but, if the  
7 Ed. Code says it's only the parents with whom the student  
8 lives, then that's the law.

9 MR. SCRIBNER: Yeah, that language came directly  
10 from the Ed. Code.

11 MS. STEINMEIER: So I understand their objection.  
12 I'll reserve future questions.

13 CHAIRPERSON PORINI: All right. Mr. Nissen.

14 MR. NISSEN: Thank you.

15 Well, as the new member of this Commission, forgive  
16 me, because all of these things are new to me, but I'm trying  
17 to, if I may, distill your argument, and, that is, that we  
18 don't really even need to get to the question of whether the  
19 amended 17571 expands or we should rely on the amended  
20 version as opposed to the earlier version. We have plenary  
21 authority under other statutes to conform any claiming  
22 instructions to the Parameters and Guidelines.

23 Anyway, is that a fair distillation?

24 MR. PETERSEN: Yes, it is.

25 MR. NISSEN: And, in fact, the amended statute  
26 merely clarifies, this is your argument now, an authority  
27 that we already have; it doesn't create a new power. It  
28 merely clarifies something that we already can do.

1           MR. PETERSEN: Under, at least, two other statutes,  
2 yes.

3           MR. NISSEN: Okay. Response?

4           MR. SCRIBNER: It's staff position, aside from it  
5 not being retroactive, that the ability or the requirement  
6 that claiming instructions conform to the Parameters and  
7 Guidelines does not take away the State Controller's ability  
8 to prescribe the manner or prescribe the ability, or the  
9 Controller's ability, to audit claims. And we found that  
10 Items 1, 3, 5 and 6 went to the Controller's ability to audit  
11 claims, what type of documentation we're looking at, what  
12 type of things are supposed to be in their forms, those types  
13 of issues.

14           For example, the data block, the language that says  
15 this must be complete, and that's just something that will  
16 help avoid, in our view, a claimant's own -- it will help  
17 avoid problems down the road of potential, you know, IRCs or  
18 having to do any additional documentation for the Controller.  
19 So the language in 72571 -- I guess our point is that even if  
20 we applied that, we would not change our minds, as far as  
21 Items 1, 3, 5 and 6. We think these go to the Controller's  
22 ability on the audit issue, as we laid out in the staff  
23 analysis.

24           MS. JORGENSEN: And one thing, I think, that needs  
25 to be pointed out is that, in these particular claiming  
26 instructions, under Section 6, subdivision (B), of these  
27 Parameters and Guidelines, it provided that: "Determination  
28 of the adequacy of the claimant's supporting documentation is

1 within purview of the State Controller as permitted by law."  
2 So, in this particular case, the Parameters and Guidelines  
3 did give the Controller's Office authority to establish the  
4 types of documentation. So we think, in this situation, the  
5 change in law, really, would have no effect.

6 MR. PETERSEN: That was the May 30th, 1996  
7 compromise sentence. That was written during the course of  
8 the hearing.

9 CHAIRPERSON PORINI: All right. Other questions or  
10 comments?

11 MR. CUNNINGHAM: Can I respond to this?

12 CHAIRPERSON PORINI: Certainly, Mr. Cunningham.

13 MR. CUNNINGHAM: Again, our point is that staff has  
14 missed a point. These are not adequacy questions; these are  
15 substantive questions. They have nothing to do with the  
16 procedure or the manner in which something is filed. They  
17 have to do with substance of documents that support the  
18 claim, not with the procedure to file the claim.

19 And with respect to some of these -- some of those  
20 requests may seem rather minor, but, if you look at the  
21 language in the claiming instructions, it says, "If you don't  
22 check this box, you don't get paid." It doesn't say it's  
23 going to delay your claim or it's going to make both your  
24 life and my life a little more difficult. It says, "You  
25 don't get paid."

26 So some clerk inadvertently fails to check that box,  
27 that claim is invalid. Now, it doesn't mean that the local  
28 government didn't incur the costs. They could have a very

1 legitimate claim, legitimate costs. They have done  
2 everything that they need to do to carry out the state  
3 mandate but they forgot to check that box and they don't get  
4 paid.

5 And, further, if you specify a document that doesn't  
6 exist in the usual course of business, guess what happens on  
7 the audit? You don't get paid, because the documents request  
8 that it doesn't exist.

9 MR. SHERWOOD: But they're not saying you probably  
10 won't get paid; they're saying it can't be processed. You  
11 could probably get an opportunity to check that box and it  
12 possibly would be paid.

13 MR. CUNNINGHAM: Well, if it's returned to me more  
14 than one year after the claim deadline, I'm dead.

15 MR. SHERWOOD: Well, I'm assuming they're not going  
16 to do that.

17 MR. CUNNINGHAM: Well, they have. They've done it  
18 after a two-and-a half-year audit period.

19 CHAIRPERSON PORINI: All right. Any other questions  
20 or comments?

21 Mr. Scribner.

22 MR. SCRIBNER: I would just like to point the  
23 members' attention to Exhibit A, Bates page 30, which was the  
24 Controller's claiming instructions. At the very top of the  
25 page, it says "source documents required to be maintained by  
26 the claimant may include," we do not read that to say that  
27 source documents required to be maintained. It means that  
28 they're required to include those others.

1           It's -- in our reading, it says that source  
2 documents are required to be maintained, period, but they may  
3 include these things. Now, that was our interpretation of  
4 that language, and it seems that the claimant is saying that  
5 it -- since it may include this, it's required, it makes all  
6 of those documents are -- some of the requirements. And, if  
7 they don't have them or don't show up with them, they're not  
8 going to be processed or paid. And we do not --

9           MR. PETERSEN: Well, that's what it says today. If  
10 you give up jurisdiction, what is it going to say tomorrow?

11          MR. BELTRAMI: I don't think we're giving up  
12 jurisdiction. I think I agree with your point, that we are  
13 the prime movers, as far as the Parameters and Guidelines. I  
14 think you've selected maybe not the best case to use. Some  
15 of these items are --

16          MR. PETERSEN: There are seven more scheduled for  
17 next month.

18          MR. BELTRAMI: Well, you know, the idea that someone  
19 has to say that something is correct, I do find exception  
20 with that, is -- I think you're --

21          MR. PETERSEN: Actually, the auditor would say that,  
22 whether it was acceptable.

23          MR. BELTRAMI: The auditor would say that?

24          MR. PETERSEN: Whether the documentation is  
25 acceptable or not.

26          MR. BELTRAMI: What if the Controller says, yeah,  
27 that you should sign the claim forms? Would you find that  
28 objectionable?

1           MR. CUNNINGHAM: No. That's also in the Parameters  
2 and Guidelines, and I think that's a procedural matter.

3           MR. BELTRAMI: What if he says it should be on green  
4 paper? Do you find that --

5           MR. CUNNINGHAM: Then we would object.

6           CHAIRPERSON PORINI: That would be an additional  
7 mandate.

8           Ms. Steinmeier.

9           MS. STEINMEIER: I can't pass up this opportunity.  
10 I know this is a constant frustration, I've heard this for  
11 years, and so I am going to ask Mr. Vorhies this question, to  
12 the Controller's Office: Do you specifically require  
13 specific documents or just enough documentation to prove a  
14 claim? And how do you select which documents to cite in your  
15 claiming instructions?

16          MR. VORHIES: Actually, we don't select the  
17 documents; the claimant does. And what we really do is just  
18 ask that the document itself prove the expenditure. What  
19 we're trying to do -- I think what we're missing here is that  
20 the calls we get are not from Mr. Petersen and from  
21 Mr. Cunningham; the calls we get are from several hundred of  
22 the other claimants saying, "Okay. What kind of  
23 documentation would fit into this particular reimbursable  
24 component?" So what we try to do is say, "Well, here are the  
25 five or six that we can think of that might fit into this  
26 particular component, but, of course, there are other  
27 documents that you might keep, also."

28          So we really don't select the documentation that

1 they would submit to us; the claimant does that themselves.  
2 We just look at it to see if it proves the expenditure. Our  
3 goal, really, is the same as the claimant, and that is to  
4 ensure that they are reimbursed the full amount of money that  
5 they've spent on this that they have documentation for.

6 MS. STEINMEIER: One quick follow-up question.

7 Who makes the judgment call if that documentation is  
8 adequate?

9 MR. VORHIES: Our auditors do that, yes.

10 MS. STEINMEIER: And who's your auditors? Is there  
11 a consistency, across the board, about how they did that?

12 You answer the question, Mr. Vorhies.

13 MR. VORHIES: Well, I'm going to say that we make  
14 every effort to be consistent. I think that there's human  
15 nature, sometimes, where somebody looks at a piece of paper a  
16 little bit differently. I think you can hear the staff and  
17 the claimants, here, they're looking at something  
18 differently. Our auditors do the same thing on occasion. So  
19 would that be inconsistent? Sometimes, but, mostly, we make  
20 every effort to train staff the same way and look for the  
21 same thing.

22 MR. PETERSEN: And, to be fair, they're handling  
23 like 50,000 claims a year.

24 MR. VORHIES: And that is true. Our claims are up  
25 to -- I think what we have now is a hundred and some programs  
26 and about 67,000 claims a year, and very often we look at  
27 them two or three times.

28 CHAIRPERSON PORINI: Mr. Cunningham.



1           MR. CUNNINGHAM: Yeah, again, we wouldn't have a  
2 problem if the State Controller's Office was telling people  
3 that these are examples of types of documents that they may  
4 want to choose to keep to prove their claims, but that's what  
5 this language says. This language says, "Documents required  
6 to be maintained," and that's required by whom, "by the State  
7 Controller's Office may include the following."

8           MR. SHERWOOD: But, Jim, I just heard the  
9 Controller's representative say that's not really the case.  
10 And, then, when you read this, it can be read two different  
11 ways, possibly. So we go to the Controller's representative,  
12 who is judging these documents. So, you know, I'm hearing  
13 conflicting --

14          MR. CUNNINGHAM: Mr. Sherwood, I can give you a  
15 number of examples where I have had claims where we have had  
16 the review personnel at the State Controller's Office say,  
17 "You don't have time sheets or time cards signed by the  
18 person who did this activity. We're not going to pay you."  
19 And we say, "We have other documentation." And they say, "We  
20 don't care."

21          MR. SHERWOOD: Now, would that be a problem,  
22 possibly, within Controller's Office, or a situation, since  
23 there are so many claims going through that you do have a  
24 human error on occasion or is that a policy?

25          MR. VORHIES: No, that's not a policy. I'm not sure  
26 quite how to respond to Jim. I would disagree with him. I  
27 think that time sheets are a very valid way to show that an  
28 employee has spent some amount of time on a particular

1 mandate. And certainly that's -- well, I'll even say this:  
2 Time sheets, very often, don't prove how much time an  
3 employee has spent on this. We are open to almost any  
4 documentation that proves the time or proves the expenditure.  
5 If there's a question in the proof, sometimes the  
6 documentation is very hard to accept.

7 MR. SHERWOOD: Just to follow that up a little bit,  
8 I just want to get a little bit on your background.

9 How long have you been with the Controller's Office?

10 MR. VORHIES: Well, I've been with the Controller's  
11 Office for 23 years; I've been with this program only two  
12 years.

13 MR. SHERWOOD: In this program two years?

14 MR. VORHIES: Yes. Now, Jeff, here, has been there  
15 forever, I think.

16 MR. SHERWOOD: And in this program?

17 MR. YEE: That's right. And what Mr. Vorhies has  
18 been explaining to you is correct.

19 MR. SHERWOOD: Thank you.

20 MR. PETERSEN: Except that neither one of these  
21 gentlemen do the audits. It's done by another branch in  
22 their office.

23 CHAIRPERSON PORINI: Mr. Beltrami -- or I'm sorry.  
24 Were you done?

25 MR. VORHIES: We actually do the desk reviews. I  
26 think he's talking about the field audits. There are desk  
27 reviews and there are field audits. Those are two different  
28 units, that's correct.

1           MR. SHERWOOD: Is there a reason that the field  
2 audits would be handled differently than the staff's reviews?

3           MR. VORHIES: The field audits are -- again, we  
4 generally ask for a field audit when we can't interpret what  
5 the documentation means. If we see documentation that  
6 doesn't really describe or prove the expenditure, then we  
7 would ask for a field audit where -- to where we can actually  
8 go out and take a look at what's housed by the claimant.

9           CHAIRPERSON PORINI: Mr. Beltrami.

10          MR. BELTRAMI: Well, Mr. Vorhies, one of the items  
11 of concern is that the claim cannot be processed for payment  
12 unless this data block is correct and complete.

13          How do you know, during, if it's correct?

14          MR. VORHIES: Well, I think the data block is really  
15 transferring data from the second and third page of the claim  
16 to the front page of the claim.

17          MR. BELTRAMI: So it's --

18          MR. VORHIES: I mean, if there was some of that  
19 data missing, we would not be able to process the claim. I  
20 will mention this, though, just to help you out a little bit,  
21 is that language is no longer in future claimed instructions.

22          MR. BELTRAMI: That helps.

23          MR. PETERSEN: Well, I heard that in May 30th of  
24 1996. I think there's a better chance of that happening this  
25 time.

26          MR. BELTRAMI: Do you want him to take notes?

27          CHAIRPERSON PORINI: All right. Do we have any  
28 other questions or comments from members?

1 Do we have a motion?

2 MR. SHERWOOD: I would like to move for approval of

3 the staff recommendation.

4 CHAIRPERSON PORINI: And --

5 MR. FOULKES: Second.

6 CHAIRPERSON PORINI: We have a motion and a second.

7 Any discussion?

8 All right. May we have role call.

9 MS. HIGASHI: Mr. Beltrami?

10 MR. BELTRAMI: Yes.

11 MS. HIGASHI: Mr. Foulkes?

12 MR. FOULKES: Aye.

13 MS. HIGASHI: Mr. Lazar?

14 MR. LAZAR: Aye.

15 MS. HIGASHI: Mr. Nissen?

16 MR. NISSEN: Aye.

17 MS. HIGASHI: Mr. Sherwood?

18 MR. SHERWOOD: Aye.

19 MS. HIGASHI: Ms. Steinmeier?

20 MS. STEINMEIER: Aye.

21 MS. HIGASHI: Ms. Porini?

22 CHAIRPERSON PORINI: Aye.

23 Thank you very much.

24 MS. HIGASHI: Items 5 and 6 are being postponed.

25 And this brings us to Item 7 which is the test claim

26 on the Gann Limit Calculation. This item will be presented

27 by Mr. Scribner.

28 MR. SCRIBNER: "On November 6, 1979, the

1 voters approved Proposition 4, the 'Gann  
2 Initiative,' adding Article XIII B to  
3 the California Constitution. In response  
4 to Article XIII B, the Legislature added  
5 Division 9 to the Government Code to  
6 'provide for the effective and efficient  
7 implementation of Article XIII B of the  
8 California Constitution.' Staff finds  
9 the activities of annually establishing  
10 appropriations limits by resolution and  
11 making the documentation used in making  
12 that decision available to the public  
13 constitutes a new program or higher  
14 level of service imposed upon school  
15 districts, county offices of education,  
16 and community college districts.  
17 Although the requirements to report and  
18 adopt appropriations limits have broad  
19 applicability since their enactment in  
20 1980, subsequent legislation has provided  
21 more definitive directions for the adoption  
22 of these resolutions by a local jurisdiction.  
23 These requirements are detailed in staff's  
24 analysis. Staff concludes that the test  
25 claim legislation, regulations and executive  
26 orders impose a new program upon school  
27 districts, county offices of education,  
28 and community college districts.

1           "However, the issue remains whether  
2           the test claim legislation imposes costs  
3           mandated by the state. In order for the  
4           test claim legislation, regulations, and  
5           executive orders to impose a reimbursable  
6           program under section 6, Article XIII B  
7           of the California Constitution, the newly  
8           required activities must be state mandated.  
9           Government Code Section 17556, subdivision  
10          (f), provides that the Commission shall  
11          not find costs mandated by the state if  
12          the Commission finds that the test claim  
13          legislation imposed duties that were  
14          expressly included in a ballot measure  
15          approved by the voters in a statewide  
16          election. Therefore, if the Commission  
17          makes such a finding, then the Commission  
18          must deny this test claim.

19          "Staff finds that in order for the  
20          propositions cited in the test claim to  
21          preclude the Commission from finding the  
22          test claim legislation imposes costs  
23          mandated by the state, the activities  
24          must be expressly included in those  
25          ballot measures. Analysis of whether  
26          the activities claimed were expressly  
27          included in a ballot measure is detailed  
28          in the staff analysis.

1               "Staff finds that the Legislature,  
2               through its additions and subsequent  
3               amendments to the Education and Government  
4               Codes, imposed the costs of the claimed  
5               activities upon school districts, county  
6               offices of education, and community college  
7               districts. Therefore, the requirements  
8               that school districts, county offices of  
9               education, and community college districts  
10              adopt their appropriations limit for the  
11              current and preceding fiscal years and  
12              make documentation available to the public,  
13              represent costs mandated by the state.

14              "Based on the foregoing, staff recommends  
15              the Commission find that the test claim  
16              legislation, regulations, and executive  
17              orders impose a reimbursable state-mandated  
18              program upon school districts, county offices  
19              of education, and community college districts  
20              within the meaning of Section 6, Article XIII B  
21              of the California Constitution and Government  
22              Code Section 17514 for the activities listed  
23              in the staff analysis."

24              Will the parties please state their names for the  
25      record.

26              MS. HIGASHI: Before we do, could we have the  
27      parties raise their hands, since we're now in the official  
28      hearing part of the meeting?

1           Do you solemnly swear or affirm that the testimony  
2   that you're about to give is true and correct based upon your  
3   personal knowledge, information and belief?

4           (Whereupon the witnesses unanimously answered  
5           "yes.")

6           MS. HIGASHI:   Thank you.

7           MR. PETERSEN:   Keith Petersen, representing Alameda  
8   County Office of Education.

9           MS. BERG:   Carol Berg, Education Mandated Cost  
10   Network.

11          MR. PODESTO:   Lynn Podesto, Department of Finance.

12          MR. TROY:   Dan Troy, Department of Finance.

13          CHAIRPERSON PORINI:   All right.   Would the claimants  
14   like to begin?

15          MR. PETERSEN:   Well, it happens every once in a  
16   while, but I agree with the staff recommendation, and the  
17   reason I can do that happily is that this is a straight shot  
18   from beginning to end.   There are no off-ramps; no places to  
19   get lost.   There's not much room for policy interpretation.  
20   It's a pretty black-and-white law, and I think the fact that  
21   we both concur means there's only one decision, and that was  
22   the one that staff is putting forward, that it is a  
23   reimbursable state mandate.

24          CHAIRPERSON PORINI:   Ms. Berg.

25          MS. BERG:   We support the staff recommendation and  
26   urge your support, as well.   Thank you.

27          CHAIRPERSON PORINI:   All right.   I suspect G.I.S. is  
28   not going to work in this case.



1           Mr. Podesto.

2           MR. PODESTO: Yes. As occasionally happens, we  
3 disagree with the staff analysis. I think we have some good  
4 reasons here. We don't think it's quite that clear-cut. We  
5 think maybe the staff has taken maybe too narrow of a view of  
6 what "expressly included" in the initiative means.

7           We think -- well, if you take away the statutes and  
8 the management bulletins, what you have left is schools still  
9 having to do this. They're still going to have to calculate  
10 their limit. They're going to have to approve their budget  
11 within the law, which includes the limit, and we think that  
12 that's still going to have to be something that's going to --  
13 have to be publicly noticed and information made available.

14          Now, unfortunately, we had staff turnover about the  
15 time the staff analysis came out. We had requested an  
16 extension. We would like to have the A.G. develop legal  
17 arguments to rebut the staff analysis, and that would be our  
18 preference, at this point, would be to get an extension on  
19 this and have the A.G. develop the arguments a little better.

20          CHAIRPERSON PORINI: Okay. Claimants, you obviously  
21 want to move forward at this point in time, but my  
22 inclination, as we have done in the past when folks have come  
23 forward, as in Items 5 and 6 this month, is to go ahead and  
24 grant an extension of time by one month.

25          Is that acceptable?

26          MR. PETERSEN: Can I comment on his request?

27          CHAIRPERSON PORINI: Sure.

28          MR. PETERSEN: Thank you. This test claim was filed

1 in December of 1997 and the state agencies requested or  
2 responded in 1998. The Department of Finance asked for a  
3 60-day period, additional period, to respond, due to the  
4 complexity of the issues and they did respond. This was one  
5 of five test claims filed by the Alameda County Office of  
6 Education. They're all stapled in the package.

7 Of the five test claims, the Department of Finance  
8 turned three of them over immediately to the Attorney  
9 General's Office because there were words with more than one  
10 syllable contained in the arguments. Two of them were kept  
11 at the Department of Finance, this one in the collective  
12 bargaining agreement disclosure. That one was adjudicated by  
13 this Commission last year. In fact, it had the shortest time  
14 scale for adjudication. The Department of Finance had this  
15 opportunity to ask the Attorney General to handle this case  
16 for them. To do that, at this time, because of staff  
17 turnover is a little disingenuous, I think.

18 CHAIRPERSON PORINI: All right. Thank you for your  
19 comments, Mr. Petersen. I think that it's the will of the --

20 MR. BELTRAMI: Well, it's not my will, Madam Chair.

21 CHAIRPERSON PORINI: Okay.

22 MS. STEINMEIER: Can I comment?

23 CHAIRPERSON PORINI: Mr. Beltrami.

24 MR. BELTRAMI: I've heard some comments here earlier  
25 today about -- that we're being criticized by the Legislature  
26 for not taking timely action on issues. Here's a situation  
27 where it seems like, if the comment that I just heard is  
28 correct, that the Department of Finance has had adequate time

1 to decide or refer to the Attorney General. And, if they did  
2 three out of five that way, I really don't see any reason for  
3 the continuance.

4 MR. PETERSEN: We also have another problem, too,  
5 and that's --

6 CHAIRPERSON PORINI: Just a moment, please.

7 Mr. Podesta, when did you get this claim?

8 MR. PODESTO: I can't speak for when it actually  
9 came into the office. We had turnover right after the  
10 governor's budget, the person that was in this assignment.  
11 We also had a change in the coordination role for all  
12 mandates in our office. This claim just came to me last  
13 week, and we put in several hours in reviewing it to try to  
14 get a sense of why the Commission staff disagreed with our  
15 initial, you know, comments on the claim.

16 We think there's -- we've spoke with the Attorney  
17 General. We all believe that there's some serious  
18 shortcomings in the staff's analysis, and that this does not  
19 impose a new program or a higher level of service and is not  
20 a reimbursable activity.

21 CHAIRPERSON PORINI: Ms. Steinmeier.

22 MS. STEINMEIER: I hear Mr. Beltrami that --  
23 although, maybe -- at least, initially, right now, but three  
24 years is a long time to just sit on a case and not do  
25 anything with it, if you think the arguments are complex.  
26 And I hear what you're saying, the staff analysis that you  
27 want to focus on, not the overall case, but I think you've  
28 pretty well stated what will probably end up being the

1 argument, but you have to do the calculation anyway. I'm  
2 inclined not to postpone it, like Mr. Beltrami, but we'll see  
3 what the Commission wants to do.

4 CHAIRPERSON PORINI: All right.

5 MR. PETERSEN: Can I mention another problem now?

6 CHAIRPERSON PORINI: Please, Mr. Petersen.

7 MR. PETERSEN: I know you want to hear this. Most  
8 of you are aware that the annual claim, called mandate  
9 reimbursement process, that reimburses the costs of our  
10 participation in this process -- it costs the state to have  
11 us come up here month after month, and it costs a lot of  
12 money. The Education Mandated Cost Network has an executive  
13 committee of about 12 districts. Two of those districts have  
14 been notified that they're spending too much money on this  
15 process and had their MRP claims cut.

16 Now, if we have to keep coming back because the  
17 Department of Finance has turnover or that they didn't know  
18 the state budget was coming up in May again, you're going to  
19 incur more costs, and the State Controller, who doesn't  
20 always work hand in hand with the Department of Finance, will  
21 cut our claims for spending too much on this process with you  
22 folks. I'm sure that that issue will eventually be resolved,  
23 but, right now, they're spending additional money responding  
24 to those cuts. So, every time we come up here, we're  
25 increasing the costs to the state and the districts are not  
26 necessarily being reimbursed.

27 CHAIRPERSON PORINI: Well, coming from the  
28 perspective of the Department of Finance, we don't want to

1 expend a lot of money.

2 MR. PETERSEN: Sure.

3 CHAIRPERSON PORINI: I think common courtesy,  
4 though -- we postponed two items on today's agenda, one  
5 because the claimants couldn't come here. They clearly knew  
6 in advance that their claim was going to be on this calendar.  
7 I think that it would be common courtesy to grant a one-month  
8 extension to the Department of Finance. It doesn't take a  
9 response --

10 Mr. Foulkes?

11 MR. PETERSEN: The Attorney General is not going to  
12 do this in a month.

13 MR. FOULKES: Thank you, Madam Chair. And, again, I  
14 agree with Mr. Beltrami that we really need to start speeding  
15 up these claims and moving forward. However, with this one,  
16 I do think it's a little tougher if people are -- who are  
17 granting the waivers for some and wouldn't be granting it for  
18 others. And I guess, for me, I'd like to either see us have  
19 a policy of not granting waivers and just saying, "You can't  
20 show up? Too bad. We're going to rule on your claim  
21 regardless," or saying that we treat everyone equally,  
22 because I do agree that I don't want to -- when I'm saying  
23 our office's desire to start moving the process a little  
24 faster, not have -- you know, grant it for Finance and not  
25 for claimants or claimants and not for Finance, or whatever,  
26 and get into that kind of who-do-we-like-better scenario.

27 So I'm not opposed to a one-month delay, but I would  
28 certainly say that if the Attorney General, or whoever else,

1 was not prepared at the next meeting -- I think that there is  
2 some really interesting issues in this claim. I've been  
3 talking to staff and I think it's a little more complicated  
4 than, perhaps, the write-up states; however, I agree very  
5 much with Ms. Steinmeier and Mr. Beltrami. I don't want to  
6 get into -- and, frankly, if we have a policy that you get  
7 your one bite of the apple and then the next month that's it,  
8 then that might make it a little easier, because we could  
9 just say, you know, after that, be prepared to have your  
10 claim --

11 MS. GOMES: And I -- sorry. I would agree with  
12 Member Foulkes, as well.

13 MR. SHERWOOD: And I.

14 CHAIRPERSON PORINI: All right.

15 MS. HIGASHI: I just wanted to add that if we do  
16 receive a new filing from the Attorney General's Office, that  
17 we would normally grant the claimant an opportunity to file  
18 rebuttal comments, in all fairness, if it's new arguments  
19 that haven't been made or if they're more complex.

20 MR. PETERSEN: Well, I don't know how the Attorney  
21 General is going to do this in a month.

22 CHAIRPERSON PORINI: I certainly can't speak to the  
23 Attorney General's Office. I think I would be willing to  
24 give Finance a one-month delay, period.

25 MR. PETERSEN: And that's the fourth time this has  
26 happened since January; they had come to the hearing and said  
27 they weren't ready. So, if they need two or three times to  
28 get it right, we should know that ahead of time.

1           MR. BELTRAMI: I was going to say, Madam Chair, I  
2 would have had no problem if this had been cancelled, just as  
3 the other two items were cancelled, but not to come through  
4 all this --

5           CHAIRPERSON PORINI: Yes.

6           MR. BELTRAMI: -- which makes it an extension,  
7 number one. Number two, perhaps you can inform me: What is  
8 Finance's policy in relating to Attorney General's opinions?  
9 Is it an automatic thing? Is it only on certain selected  
10 issues that you don't feel the expertise is in-house? What  
11 is the policy?

12          CHAIRPERSON PORINI: I certainly can't respond to  
13 that.

14          MR. PODESTO: Well, and I'm not the appropriate one  
15 to respond to our policies. This is the first time I've been  
16 before this Commission to speak on an issue. But I think in  
17 this case, initially, we thought it was pretty clear-cut. It  
18 was the will of the people that required calculations and so  
19 forth to be done. So I, you know, thought, we thought it was  
20 pretty straightforward.

21          Now there's legal arguments brought up about what  
22 "expressly included" means. And, you know, we still -- we  
23 see things that certainly speak to calculations, adjustments,  
24 a calculation right in the XIII B here, Section 1.5, so I  
25 think it's evolved into a more complicated issue.

26          MR. PETERSEN: Well, I admit they're befuddled by  
27 the law but is that an excuse for not being prepared?

28          CHAIRPERSON PORINI: Mr. Petersen, you're not

1 helping matters.

2 MR. PETERSEN: Well, I can't see how it could get  
3 much worse, Madam Chair.

4 CHAIRPERSON PORINI: All right. Why don't -- if  
5 someone is willing to make a motion, let's just do this by  
6 motion and it'll either go up or it'll go down and we'll  
7 either have the hearing or won't.

8 MS. STEINMEIER: I move to have the hearing today.

9 MR. BELTRAMI: Second.

10 CHAIRPERSON PORINI: All right. We have a motion.  
11 Call the role.

12 MS. HIGASHI: Mr. Foulkes?

13 MR. FOULKES: No.

14 MS. HIGASHI: Ms. Gomes?

15 MS. GOMES: No.

16 MS. HIGASHI: Mr. Lazar?

17 MR. LAZAR: No.

18 MS. HIGASHI: Mr. Sherwood?

19 MR. SHERWOOD: No.

20 MS. HIGASHI: Ms. Steinmeier?

21 MS. STEINMEIER: Aye.

22 MS. HIGASHI: Mr. Beltrami?

23 MR. BELTRAMI: I should vote no, now, shouldn't I?  
24 Just kidding. Yes.

25 MS. HIGASHI: Ms. Porini?

26 CHAIRPERSON PORINI: No.

27 MS. HIGASHI: We will continue this, and I will get  
28 together with the parties to find out when the briefs can be



1 filed and the claimant can file rebuttal, and we will  
2 reschedule this matter.

3 CHAIRPERSON PORINI: All right.

4 MR. SHERWOOD: May I ask one thing?

5 CHAIRPERSON PORINI: Yes, Mr. Sherwood.

6 MR. SHERWOOD: I'm assuming we'll continue it for  
7 30 days?

8 MS. HIGASHI: Well, the problem will be if the  
9 Attorney General's brief does not come in, when we do not --  
10 we want Mr. Petersen to have adequate time to respond and for  
11 all of the documents to be forwarded to you. It would not be  
12 prudent to --

13 CHAIRPERSON PORINI: Well, can't we ask staff  
14 to please -- we want to give Mr. Petersen more than four and  
15 a half hours to respond.

16 MR. PETERSEN: That's not a new standard, is it?  
17 Sorry I mentioned it.

18 MS. STEINMEIER: 24 hours.

19 MR. SHERWOOD: I do think that it's really important  
20 that the Department of Finance and the Attorney General  
21 understand that we need their responses as quickly as  
22 possible, because we can't keep continuing, as you've heard  
23 today, to put these items off, and it is a problem. And  
24 maybe, somewhere, we're going to have to direct a decision to  
25 it, but I'm not happy about this at all. It seems to me  
26 we've given both sides various opportunities and we're  
27 getting the same answer that we're getting today. We have  
28 allowed it, but it has become a significant problem, and,

1 personally, I don't like it.

2 CHAIRPERSON PORINI: Thank you.

3 MS. HIGASHI: Item 8 has already been adopted.

4 And this brings us to Item 9, the proposed statement  
5 of decision for involuntary transfers. I believe  
6 Mr. Cunningham missed being at the table for the last item,  
7 so I'll just ask him to raise his hand.

8 Do you solemnly swear or affirm that the testimony  
9 you're about to give is true and correct, based upon your  
10 personal knowledge, information and personal belief?

11 MR. CUNNINGHAM: Yes, I do.

12 MS. JORGENSEN: "On April 27th, 2000, the  
13 Commission on State Mandates heard and denied  
14 this test claim, on a 4-3 vote, finding the  
15 test claim statutes did not constitute a new  
16 program or higher level of service.

17 "The sole issue before the Commission  
18 is whether the Proposed Statement of Decision  
19 accurately reflects the vote of the Commission.

20 "During the hearing on the test claim,  
21 the Commission considered approval of the  
22 test claim, partial approval of the test  
23 claim based on findings that a portion of  
24 the test claim legislation implemented  
25 federal procedural due process provisions  
26 required by the 14th Amendment to the  
27 United States Constitution, and denial of  
28 the test claim.

1                   "The Commission concluded, by a 4-3 vote,  
2                   that the test claim is not a new program or  
3                   higher level of service. Staff reviewed  
4                   the hearing transcript and concluded that  
5                   this determination was based on testimony  
6                   by Department of Finance representatives  
7                   that the use of the involuntary transfer  
8                   process is a choice for school districts.

9                   "Staff submits that the attached Proposed  
10                  Statement of Decision accurately reflects the  
11                  Commission's action taken at the April 27, 2000  
12                  hearing regarding the involuntary Transfers  
13                  Test Claim. Therefore, staff recommends that  
14                  the Commission adopt the attached Proposed  
15                  Statement of Decision denying this test claim."  
16                  Would the parties please state their name for the  
17 record.

18                 MR. CUNNINGHAM: Jim Cunningham, San Diego Unified  
19 School District.

20                 MS. BERG: Carol Berg, Education Mandated Cost  
21 Network.

22                 MR. BELL: Jeff Bell, Department of Finance.

23                 CHAIRPERSON PORINI: Claimant?

24                 MR. CUNNINGHAM: Thank you. I do understand that  
25 the test claim was denied, and this is the first time I think  
26 I've ever had to come up on a Proposed Statement of Decision  
27 to disagree with the basis of the decision. The staff  
28 analysis, the supplemental analysis, that was dated

1 April 20th, 2000, that was presented to this Commission set  
2 out several issues for this Commission to resolve, the first  
3 of which was whether or not the test claim statutes imposed a  
4 new program or higher level of service. The staff  
5 recommended that you find that it did impose a new program or  
6 higher level of service. In fact, the motion was: There was  
7 not any program or higher level of service.

8           That entire discussion, on those pages that deal  
9 with that particular issue, address only what was required  
10 under prior law and what was required under the test claim  
11 statute. So the only logical conclusion, based upon the  
12 motion that was made, was that we found that the same  
13 requirements that were imposed by the test claim statute  
14 were, in fact, imposed by prior law.

15           And, my review of the transcript, and I certainly  
16 could have misunderstood her but I understood Member Gomes'  
17 questions to fall on that line: What was required under  
18 prior law? I understand that there was some discussion,  
19 limited discussion, on whether this was really a mandatory  
20 program or a voluntary program, that I don't believe that  
21 that was included in the motion nor was there any discussion  
22 by the Commission members following those comments by the  
23 Department of Finance. So I do not believe that this  
24 Statement of Decision accurately reflects the decision made  
25 by this Commission.

26           Thank you.

27           CHAIRPERSON PORINI: Question?

28           MR. FOULKES: No. I'd just like to move staff's

1 recommendation.

2 CHAIRPERSON PORINI: All right.

3 MS. GOMES: Second.

4 CHAIRPERSON PORINI: We have a motion and a second.

5 Is there a discussion?

6 Yes, Ms. Steinmeier.

7 MS. STEINMEIER: I have to admit that I was somewhat  
8 confused. The bottom line, that we rejected it, was very  
9 clear. The rationale upon which it was based was not all  
10 that clear, the document, but I do agree that we did find --  
11 that there's no -- there's no -- that the claim was denied.  
12 So I know how critical it is, unless it's based on some  
13 future litigation, I shudder to say, why we have to include  
14 all of the details that Mr. Cunningham is talking about, but,  
15 when I took a look at it, I was somewhat confused, because it  
16 discusses -- actually, it almost argues the opposite  
17 position.

18 CHAIRPERSON PORINI: All right.

19 Mr. Beltrami.

20 MR. BELTRAMI: Madam Chair, I was wondering if staff  
21 has any comments on Mr. Cunningham's proposal?

22 MS. JORGENSEN: Well, in preparing the decision, we  
23 went through the transcript, and, again, the purpose of the  
24 hearing is to get testimony from all the parties, from  
25 everyone involved, and, as I look here in our regulation,  
26 1188.2, power of decision, subdivision (a), any decision made  
27 pursuant to evidence introduced -- oh, excuse me, yeah,  
28 introduced in a judicatory hearing shall be in writing, be

1 based on the record and shall include a Statement of Reasons  
2 for the decision, findings and conclusions.

3           So, in the analysis, staff went through what took  
4 place at the hearing, acknowledged the testimony from the  
5 representative from the Department of Finance, and the  
6 decision. It appeared to staff, when they wrote the  
7 decision, that the decision was based on the testimony, and,  
8 therefore, I believe it reflects what took place at the  
9 hearing and what the decision of the Commission is. It would  
10 have to be up to the Commissioners to indicate that the  
11 decision did not reflect what the decision they intended to  
12 make.

13           CHAIRPERSON PORINI: All right. We have a motion  
14 and a second to adopt.

15           Any further discussion?

16           (No response.)

17           CHAIRPERSON PORINI: May we have role call.

18           MS. HIGASHI: Ms. Gomes?

19           MS. GOMES: Yes.

20           MS. HIGASHI: Mr. Lazar?

21           MR. LAZAR: Aye.

22           MS. HIGASHI: Mr. Sherwood?

23           MR. SHERWOOD: Aye.

24           MS. HIGASHI: Ms. Steinmeier?

25           MS. STEINMEIER: Aye.

26           MS. HIGASHI: Mr. Beltrami?

27           MR. BELTRAMI: Yes.

28           MS. HIGASHI: Mr. Foulkes?

1 MR. FOULKES: Aye.

2 MS. HIGASHI: And Ms. Porini?

3 CHAIRPERSON PORINI: Aye.

4 Thank you.

5 MS. HIGASHI: Item 10 has already been adopted;

6 Item 11 has been adopted.

7 And this bring us to Item 12, which is the Executive

8 Director's Report.

9 As you may have noticed from the report, we still

10 show the incorrect reduction claims of the Open Meetings Act

11 as still on this sheet. We are in the process of confirming

12 our records with the State Controller's Office records and we

13 expect to be getting -- closing those files in the next few

14 weeks, so the next report that you receive should be --

15 CHAIRPERSON PORINI: Any idea how many will be off?

16 MS. STEINMEIER: Just a guess.

17 CHAIRPERSON PORINI: A wild guess.

18 MS. HIGASHI: We are hoping for a couple of hundred,

19 at least.

20 CHAIRPERSON PORINI: Great.

21 MS. HIGASHI: At least. And I'd also like to

22 report, just as another important note, that the Local

23 Government Claims Bill was voted upon this morning and sent

24 to the Appropriations Committee, and included in the claims

25 bill was a deficiency appropriation to cover the Open

26 Meetings Act Mandate and incorrect reduction claims. So the

27 motion -- it appeared that it went out of committee. We

28 weren't sure if it was then going to move to suspends or not,

1 but the word "suspends" was not stated during the making of  
2 motions, so we're hoping.

3 CHAIRPERSON PORINI: Great.

4 Mr. Beltrami, you had one question?

5 MR. BELTRAMI: Paula, we have these six inactive  
6 test claims. What's the status on those and how long do they  
7 stay on?

8 MS. HIGASHI: We have sent letters out to the  
9 claimants and we will begin -- on those that are being  
10 withdrawn, we will begin scheduling them for dismissal after  
11 the notice period has elapsed, and the others are being  
12 reactivated, so, as soon as the filings come in and the  
13 actions are taken, then you will see the change there.

14 MR. BELTRAMI: And the pending regulatory actions,  
15 those are rules?

16 MS. HIGASHI: Those are our currently noticed  
17 rulemaking actions.

18 MR. BELTRAMI: Thank you.

19 MS. JORGENSEN: And I will add that we're having the  
20 hearing on that following next months' hearing at 1:30 in the  
21 afternoon.

22 MR. BELTRAMI: Thank you.

23 MS. HIGASHI: Also related to the Open Meetings Act  
24 is that we're hoping to have the Parameters and Guidelines  
25 amendment on the Open Meetings Act Mandate for consideration.  
26 We're hopeful that it'll be this summer. Very soon, we'll be  
27 meeting with the parties to review the proposals.

28 The other legislation is moving along, Senate Bill



1 1982; the Alpert Bill is now, basically, a spot bill, and  
2 it's in the Assembly. It hasn't been heard. Assembly Bill  
3 2624-Cox was set for hearing yesterday and the bill was held  
4 in committee.

5 MR. BELTRAMI: Do you know, Paula, what would  
6 happen if an alternate member were appointed to represent the  
7 two local government members?

8 MS. HIGASHI: You mean if this bill were to be  
9 enacted from that provision?

10 MR. BELTRAMI: And if both members were absent that  
11 day.

12 MS. HIGASHI: I don't know. I suspect if the  
13 legislation were enacted that the Commission would want to  
14 interpret the statute to regulations.

15 MR. BELTRAMI: Okay.

16 CHAIRPERSON PORINI: I will tell you that on some of  
17 the other boards and commissions that I sit on they only  
18 allow one alternate per meeting, so that might be something  
19 we could think about.

20 Okay. Paula.

21 MS. HIGASHI: There's one other bill that has  
22 appeared on the horizon; it's Assembly Bill 2684 by Assembly  
23 Member Bock, and that bill has currently been amended. It's  
24 been going through some changes, and now the responsibility  
25 that was formerly assigned to the Commission, I believe, has  
26 now been shifted to the Controller's Office.

27 MR. FOULKES: The bill -- we've been working with  
28 Ms. Bock's office on this, and what I understand is the new

1 language will be a -- an incentive work program similar to  
2 the state that's work programming. We operate out of our  
3 office for local governments to give monetary incentives for  
4 good fiscal management, good savings to the state.

5           As it's written, as you probably noticed, the bill  
6 would be very workable and wouldn't work with the mandate  
7 laws as they exist. So what we think this is is maybe a way  
8 for them to give some local incentive for fiscal savings,  
9 but, at the same time, not follow the mandate process at all.  
10 So this would not be mandates; it would be probably just for  
11 fiscal efficiency.

12           MS. HIGASHI: And, on page 4, we detailed some of  
13 the items that are being set for future agendas. This is a  
14 tentative listing of future agenda items. And, typically, as  
15 you know, our agenda is issued about the 10th of each month.  
16 So, if you have any questions about these, the -- I guess the  
17 comment I can offer you is just that you will have a  
18 substantial amount of reading coming up this summer, and we  
19 will attempt to get all of those packages to you as early as  
20 we can, so you'll have adequate time.

21           CHAIRPERSON PORINI: Okay.

22           MS. HIGASHI: Are there any other questions?

23           MR. BELTRAMI: Madam Chair, one more question. On  
24 AB 2624, Paula, I see that the bill provides that a local  
25 agency can bypass the Commission and go to court. I seem to  
26 remember that when the -- one of the reasons for founding  
27 this Commission, or creating this Commission, was supposedly  
28 to get us out of the court system.

1           Has that been discussed at any of the hearings that  
2 you've attended?

3           MS. HIGASHI: I haven't heard it discussed. And you  
4 are correct, it is in the Government Code section under the  
5 legislative intent language.

6           MR. FOULKES: The issue has come up and it's been  
7 mentioned in one of the committee analyses. Again, because  
8 the bill is not moving forward, and I won't go there on that  
9 issue, but that issue had come up, and, frankly, there were  
10 so many other issues and the hearings, I think when you get a  
11 mandate process in front of the legislative committee,  
12 usually it's at the end of a hearing; it's not exactly  
13 something they get to the nuts and bolts of, so.

14          MR. BELTRAMI: Eyes glaze is over.

15          CHAIRPERSON PORINI: All right. Any other questions  
16 from members?

17          MS. HIGASHI: I know a couple of you actually have  
18 been to our new offices, I believe. I just want to say  
19 you're all certainly welcome to drop by. We still have boxes  
20 and are still waiting for our furniture to be installed, and  
21 that will be sometime in June, so we are not fully functional  
22 and efficient in a perfect way, but we like our new offices  
23 and just closer proximity to the Capitol.

24          CHAIRPERSON PORINI: Can we continue to include on  
25 our -- the mailings that we do to people some kind of  
26 highlight about the new office address and phone number so  
27 that --

28          MS. STEINMEIER: For a while.

1           CHAIRPERSON PORINI: Yeah, for several months, so  
2 that people are aware?

3           MS. HIGASHI: We can continue to do that. And,  
4 then, just as a follow-up from the last meeting or  
5 discussion, we did work on our website and the links for the  
6 Controller's biography, the State Treasurer's biography, and  
7 Mr. Gage's biography. Everything is in place now. We don't  
8 have an official biography for Mr. Nissen but we'll continue  
9 to make updates.

10           We are working through the process of being sure  
11 that we are able to put all of our items that are out for  
12 public comment on the website. It's still not in a perfect  
13 process but we've started to do that. Certainly, our  
14 regulations that are proposed are there and also pending  
15 legislation for the three bills, the Claims Bill, the Cox  
16 Bill and the Alpert Bill, we have a legislative section where  
17 one can just click on the bill number and get right to the  
18 bill page, so we're trying to make it as easy as we can for  
19 us and/or others.

20           MR. FOULKES: Nice job.

21           MS. HIGASHI: Thanks for the suggestions.

22           CHAIRPERSON PORINI: Other questions? Okay.

23           MS. HIGASHI: Thank you.

24           CHAIRPERSON PORINI: And our next meeting will be?

25           MS. HIGASHI: June 5th.

26           CHAIRPERSON PORINI: All right.

27           MS. HIGASHI: And what I will do is make every  
28 effort to get this room or another room in the State Capitol,

1 even if we have to go through a member request.

2 MR. BELTRAMI: What time are we meeting?

3 MS. HIGASHI: 9:30. We are in this room. Piper

4 told me.

5 MR. BELTRAMI: If I have to fly over --

6 MS. HIGASHI: We'll talk to you about your travel

7 arrangements.

8 CHAIRPERSON PORINI: All right.

9 Is there any other business to come before the

10 Commission?

11 MS. HIGASHI: Public comment.

12 CHAIRPERSON PORINI: Pardon me?

13 MS. HIGASHI: Public comment.

14 CHAIRPERSON PORINI: Yes. Do we have any public

15 comment?

16 (No response.)

17 CHAIRPERSON PORINI: All right. Then we will

18 adjourn our regular meeting and go into closed session and

19 ask members of the audience to leave the room now. The

20 Commission will meet in closed executive session, pursuant to

21 Government Code Section 11126, subdivision (e), to confer

22 with and receive advice from legal counsel for consideration

23 and action as necessary and appropriate upon pending

24 litigation listed on the published notice and agenda and

25 Government Code Section 11126, subdivision (a), and 17527 to

26 confer on personnel matters listed on the published notice

27 and agenda.

28 Thank you.

1                   (Whereupon the Commission met in closed session.)

2                                   ---oOo---

3                   CHAIRPERSON PORINI: I will announce that the closed  
4 session adjourned at 11:55. We're going back into open  
5 session for the Commission on State Mandates and we'll report  
6 that the Commission met in closed executive session pursuant  
7 to Government Code Section 11126 subdivision (e) to confer  
8 with and receive advice from legal counsel for consideration  
9 and action as necessary and appropriate upon pending  
10 litigation listed on the published notice and agenda and  
11 Government Code Section 11126 subdivision (a) and 17527 to  
12 confer upon personnel matters listed on the published notice  
13 and agenda.

14                   Now, is there any other business to come before the  
15 Commission today?

16                   MS. HIGASHI: I just would like to clarify what the  
17 agenda will include for the June 5th meeting. We covered it  
18 briefly. We would notice the meeting for having the proposed  
19 Parameters and Guidelines for the Special Education Test  
20 Claim. In the event that a settlement agreement is reached,  
21 depending on how the settlement is structured, it may be in  
22 the best interest of the Commission to have a proposed set of  
23 Parameters and Guidelines drafted that would allow for  
24 numbers or maybe costs or some other kind of measure to be  
25 dropped in the last minute to reflect the settlement and for  
26 that to be the subject for adoption, or, two, to also have on  
27 the agenda adoption of the proposed statewide cost estimate,  
28 in the event that there's a settlement; then the Commission

1 could take both actions at the same meeting, and then that  
2 amount would be reported to the Legislature and then could be  
3 comported to the Claims Bill or another bill, and then that  
4 the process for the mandates commission can then be closed.

5 CHAIRPERSON PORINI: Let me ask a procedural  
6 question.

7 Don't you need to circulate Parameters and  
8 Guidelines as well as the cost estimates?

9 MS. HIGASHI: We have in the past, yes.

10 CHAIRPERSON PORINI: I mean --

11 MS. HIGASHI: And what we have done is: We have --  
12 usually, we have circulated them with a number in them and  
13 the Commission, in the past, not since I've been here, but  
14 during other commissions, has actually changed the number,  
15 reduced the number, typically. But, if the Parameters and  
16 Guidelines were adopted, if a settlement were reached and if  
17 the Commission wanted to then take that next step to complete  
18 the loop and complete the mandates process, that could then  
19 go on the June agenda, the later agenda.

20 CHAIRPERSON PORINI: I like the idea of  
21 fast-tracking things so that we can close the loop. I'm just  
22 worried that putting something out there in advance could  
23 create a problem, too.

24 MS. HIGASHI: But, on the proposed Parameters and  
25 Guidelines, is there any sense about that?

26 MS. STEINMEIER: I don't mind doing -- we don't have  
27 to do it.

28 MS. HIGASHI: No.

1           MS. STEINMEIER: I mean, if it's out there and  
2 there's too many problems, we just go do it. We do it at the  
3 June meeting. It allows the possibility -- because the  
4 settlement might just pull it all together, although I don't  
5 think it's going to happen, so it's probably a moot point,  
6 but I don't have any problem with at least attempting to  
7 fast-track, knowing full well we might not get it.

8           CHAIRPERSON PORINI: Well, and I just worry about  
9 what goes into the Parameters and Guidelines since we  
10 haven't --

11          MR. SHERWOOD: I don't know how we can do it,  
12 frankly, without, maybe, having other problems crop up, some  
13 errors that we made. It's going to be a last -- if a  
14 decision is made, it's going to be --

15          MS. STEINMEIER: The morning of.

16          MR. SHERWOOD: I just don't see, Paula, how you're  
17 going to have enough time, frankly, to do these --

18          MS. STEINMEIER: Yeah.

19          MR. SHERWOOD: It's a great idea.

20          CHAIRPERSON PORINI: Yes.

21          MS. HIGASHI: Well, that's why I'm just  
22 brainstorming, basically, as to what other direction we may  
23 wish to give staff.

24          CHAIRPERSON PORINI: We do have the June meeting.

25          MS. STEINMEIER: You're only speeding it up by two  
26 weeks.

27          CHAIRPERSON PORINI: Yeah.

28          MS. HIGASHI: And, if there's a settlement reached



1 with another set of Parameters and Guidelines, what could  
2 occur, too, then, is that the claimant could withdraw, the  
3 Department of Finance could withdraw, and then resubmit a new  
4 set of Parameters and Guidelines.

5 CHAIRPERSON PORINI: All right. So we will not  
6 expect anything else to appear on the agenda?

7 MS. HIGASHI: Correct. It'll appear just as it does  
8 today but with the June 5th date.

9 CHAIRPERSON PORINI: All right. Any other items to  
10 come before the Commission?

11 Hearing none, we're adjourned.

12 Thank you very much.

13 (Whereupon the meeting concluded and 12:00 p.m.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA     )  
COUNTY OF SACRAMENTO   )  
\_\_\_\_\_)

I, STACEY L. HEFFERNAN, certify that I was the official court reporter for the proceedings named herein; and that as such reporter, I reported to the best of my ability, in shorthand writing, of those proceedings; that thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 89, herein constitute a complete, true and correct record of the proceedings:

PRESIDING OFFICER:   Annette Porini, Chairperson

JURISDICTION:       Commission on State Mandates

CAUSE:   May 25, 2000 Agenda

IN WITNESS WHEREOF, I have subscribed this certificate  
at Sacramento, California, on this 1st day of June, 2000.

\_\_\_\_\_  
STACEY L. HEFFERNAN, CSR, RPR  
NO. 10750

---oOo---

[Copy this form if additional sheets are required]

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